MINUTES
ALASKA COASTAL POLICY COUNCIL
Thursday June 20 through Friday June 21, 2002
Marriott Hotel, Anchorage Room
Anchorage, Alaska

Day 1 – June 20, 2002

A. Call to Order/Roll Call

Chair Galvin called the meeting to order at 9:10 a.m. on June 20, 2002. A quorum was present to conduct business.

Present

Charlotte Brower
Robert Fagerstrom
Alice J. Ruby
Robin Heinrichs
Jack Cushing
Nancy Bird
Patrick Galvin
Pat Poland
Marty Rutherford
Chip Dennerlein
Kurt Fredriksson
Boyd Brownfield
James Colver (arrived at 3:30 p.m.)

B. Approval of Minutes – November 15, 2000, Juneau, Alaska

Mr. Robin Heinrichs MOVED to approve the minutes of the November 15, 2000 CPC meeting as presented. Mr. Boyd Brownfield SECONDED the motion.

There being no objection, the minutes of the November 15, 2000 CPC meeting were APPROVED.

C. Approval of Agenda

Chair Patrick Galvin suggested the addition of one item to the agenda, to include a resolution recognizing the services of Bo Brownfield.

Mr. Boyd Brownfield MOVED to adopt the agenda as amended. Ms. Nancy Bird SECONDED the motion, and without objection the agenda was APPROVED as AMENDED.

Chair Patrick Galvin announces that for family and personal reasons he will be leaving DGC at the end of July 2002.

D. Public Comments on Non-Agenda Items

Mr. Dan Bevington, Program Coordinator for the Kenai Peninsula Borough Coastal Program

MR. BEVINGTON: I wanted to bring to you attention a matter that's not on the agenda. I imagine it will come up at various times. And I just wanted to let you know where the Borough stands on it. We have been aware of some changes that sometimes are in our control at the federal or state level. And some of those changes involve program changes, and I believe that we resolved some of the problems in terms of our understanding of what the proposed federal changes are. But we wanted to point out that when changes are proposed, for a district to go through the whole public process, it's a lengthy process, as you're aware, with writing these programs and developing them. And the Kenai Peninsula Borough is very dedicated to responsible resource development, and we use this program to help guide some of that development. It isn't the answer to all of it, but it's a part of it; and it's a valuable part. We just wanted to point out that when program changes are necessary from the federal level through the local district level, when we get to the part of implementing the change at the ground level, at the district, a lot of time that brings in discussion that we haven't anticipated. So, as streamlined as we might like to see it be when we're at the top view, when we get down to the ground level I just wanted to point out that sometimes that takes longer. So, as you're making decisions for the Coastal Management Program and thinking about the districts, we just wanted to encourage you to bear that in mind, that when we open those things up at the local level, we have lots of different concerns that need to be discussed and are valid in themselves in the sense that they need to be heard. So, that public process is valuable to us and we just wanted to bring that up to you.

CHAIR GALVIN: You mentioned sort of in passing, federal changes that are coming down or are going to require local changes, and I'm not aware of them.

MR. BEVINGTON: I think I've discussed this with the staff at DGC, and I'm satisfied with it. But raised my awareness and concern for this issue was a change that the Governor signed into law, the change for removing the state standards from any district policies. We have made it a practice in the last two years, since I've been in the position, of not citing those policies when we're making our recommendations on a project. It doesn't mean that we don't consider them, it just means that we're not citing them as an enforceable policy. We don't have a problem with that requirement. But the way the rule was written and the way the law was written, it appeared to me that the district needed to remove those policies from it's plan before a year passed, which would be May 24th, 2003. And that raised our concern that if we're required to hold public process, I just don't see how that's possible, given the nature and the size of the borough, and the scope of concerns that are represented. Even if we're just going to separate it from the plan, if we open up a public process, it's going to open up many more challenges. And so, in our opinion, if it's at all possible we would like to see that handled more administratively. If it's a requirement by law, if we can just somehow handle it the most expedient way possible.

MR. DENNERLEIN: I'd be interested to know if this is a challenge for other districts?

CHAIR GALVIN: I think it's an item that will come up in the staff report.

MR. DENNERLIEN: Maybe we can address some guidance and help them out.

E. Staff Reports:

1. Coastal Zone Management Act Reauthorization Status

CHAIR GALVIN: As those of you who have been on the counsel for a few years recognize, the Coastal Zone Management Act, which is the federal act that we're operating under with this program comes up for reauthorization periodically. It has been due to be reauthorized now for over three years and has not. It failed a year ago, primarily over concerns in the House of Representatives with regard to the Coastal Non-Point Source Pollution program, known as the 6217 program. There was some concern in the House with regard to the validity of that program and the necessity of having it as part of the Coastal Management Program.

Also, as the reauthorization bill was moving through the House, at one of the committees an amendment was added to it that basically designed to protect private property owners, and said that the program could not result in changes and what might be authorized with regard to private property, or something that was sort of vague in terms of its implications. But the idea was to minimize the impact of the program on private property. And that created a difficulty in getting the bill to pass through the entire House with agreement in the Senate.

A year ago, reauthorization did not happen for those reasons. Right now the reauthorization bill is pending in both the House and the Senate, and is awaiting action in committees of both bodies. And from what I understand and what is being reported out there are still issues to be addressed with regard to the 6217 program; there are concerns, as the bill moves through the committee structure, that at some juncture if it was brought to a vote that there may be an amendment attached with regard to private property again - that's trying to be worked out behind the scenes before it gets brought up for any action; and third, there is an increased amount of attention on the issue of federal consistency. Primarily it seems focused on controversies over offshore oil and gas activities down around Florida. There's some past lease sales that have been held up under Coastal Management Authority, and there's some questions as to whether or not the federal consistency provisions need to be revised in the reauthorization or not.

And so those issues are also being looked, mostly behind the scenes, so nothing is happening at the committees and nothing is moving forward. I think it seems that the feeling is, among a number the congressional staffers, that the program's there, it's not going to go away because it doesn't get reauthorized. And so there doesn't seem to be a big sense of urgency that it has to be addressed. And so, given other priorities, it's falling by the wayside.

The primary incentive for us to seek reauthorization is that most of the reauthorization packages that have been considered include provisions that significantly increase the authorization for funding and basically recognizes the need to increase the funding; and just as significantly for Alaska, there is language in most of the reauthorization bills to overcome what currently exists as a cap on the grant to the large states. When the authorizations were being increased over the years, the more powerful congressmen and senators on the appropriations

panels from the smaller coastal states included language that said that the larger states could not increase their grants, and that the smaller states would basically get any of the increases.

So, Alaska being the state with the largest coastline, which is one of the factors in determining the allocation, has been capped out at $2 million a year for many years. But the reauthorization, because now there is a majority of coastal states that are capped out, so any increase goes to the minority of states that are not yet at the cap. And so just about every bill includes language that says any increase will be allocated proportionately among all the states according to the normal factors.

So that would have a tremendous benefit to Alaska's share, therefore Alaska has an interest in seeing a reauthorization go through. But at this point, from everybody that I talked to who is involved in the discussions in D.C., it seems rather unlikely that a reauthorization bill is going to pass this Congress. And so we'll have to see if something breaks free over the next few months. And if not, some urgency can be created for the next Congressional session.

MR. DENNERLEIN: Other than the money issue, are there major issues? You mentioned in the past Florida OCS, but are there any more major policy issues in reauthorization, or is it all about money?

CHAIR GALVIN: Right now there hasn't been any action taken at any Congressional level to limit the federal consistency standards in terms of limiting the states' ability to influence the outcome. And so I think what's really at issue now is to what extent are the folks who are proponents of that able to keep the process from moving forward without that language, because they probably aren't going to get the votes to add that language.

There are two different components on the federal consistency. One component has to do with limiting the reach of the state programs into the outer continental shelf, cutting the program off at either the 3-mile line and not applying it into to OCS, or somehow limiting the states' ability to influence those activities. That's one component, a jurisdictional one.

The second component has to do with the administrative appeal process and the amount of time that it takes through. The federal Department of Commerce, and the Secretary of Commerce is responsible for mediating or coming to some resolution of the appeal. And the Florida issue has to do with an appeal from a lease sale from years ago that is still winding its way through the administrative appeals process because of endless wrangling over the administrative record and various other procedural issues. So there's a desire to cut through that process and make it efficient. And whereas the states would obviously vehemently oppose anything with regard to that first area, there may be some resolution that could be reached on the second area. And so, it's just a matter of seeing whether or not there's any movement on the bill.

Other than that, there's going to be some possible restructuring of our grant programs, moving things from 306 to 309, creating new sections for different types of grants. That kind of stuff could be included in there, and likely would be somehow in the mix. But in terms of the authority of the program and the basic structure of the program, other than these federal consistency issues, nothing else has been floated, other than the private property rights which was attached last time.

2. Budget Update

Ms. Sara Hunt gave a summary of the ACMP budget, indicating that a printed copy was included on page 55 of the packet. Ms. Hunt detailed funds received under Sections 306, 309 and 6217, as well and distribution of the funds and required fund matching by the fund recipients.

Mr. Dennerlein asked for clarification on the 30% match provided by the districts and the 15% match provided by the coastal resource service areas. Mr. Dennerlein inquired further into the guidelines regarding what is considered in-kind match. **Ms. Brower** also expressed a concern regarding the definition and criteria of in-kind and the effect it may have on the funding and local match.

Chair Galvin suggested coming up with in-kind criteria and submitting it to the federal grant administrators in order to come up with some guidelines for directing districts and state agencies on what types of things could be included in in-kind match. Mr. Dennerlein agreed with this idea, and Chair Galvin instructed that Ms. Hunt include this on the next regular business meeting agenda.

3. Legislative Update

Chair Galvin indicated page 57 of the packet contained information regarding three bills passed by the legislature and signed into law by the Governor. First, HB439 eliminated the project-based petitions. Ultimately the bill provided for a clarification of the chronic failure to implement or patterns of non-compliance or non-implementation. That type of petition remains, but the CPC will no longer be hearing petitions on a single project.

The second bill was SB308. SB308 was crafted to create an exclusion to the phasing law for a natural gas pipeline from the North Slope, and allows for phasing as needed on such a project. Also, the bill states that coastal district plans cannot incorporate by reference state statutes or regulations.

The third bill was SB371. SB371 clarifies that a coordinating agency has the discretion to exclude generally permitted activities from a single consistency determination. There is a provision that provided that the coordinating agency may also exclude from the consistency determination permits issued by the Alaska Oil and Gas Conservation Commission.

Mr. Dennerlein asked for clarification regarding SB308. Chair Galvin addressed the questions and gave clarification.

4. FY '03 309 Projects Update

Chair Galvin requested that the 309 project update be held and moved to June 21 agenda, at 1:15 p.m., prior to the 6217 update. **Ms. Hunt** consented. **Chair Galvin** asked for objections. No objections being stated, the 309 update was rescheduled as suggested.

F. Action on Proposed Revisions to 6 AAC 50 Regulations

Chair Galvin informed all present of the process and time frame required to take action regarding revising the regulations, indicating that it may take up to a month to obtain final CPC

approval and submission to the federal government. In order to have a chance to complete the entire process before the change in administration, the CPC needs to approve the package before the end of July.

BREAK 10:35 – 10:45

F. Action on Proposed Revisions to 6AAC 50 Regulations (continued)

Mr. Randy Bates, project analyst with the Division of Governmental coordination, presented the proposed regulations package.

MR. BATES: You do have the package in front of you. It's Agenda Item F in your regulation CPC binder. It is rather voluminous. It's reflective of what's gone on for the past three years. When we had the informal briefing with the council members, we briefly discussed the historical context of the ACMP and the 6 AAC 50 consistency review regulations that were developed. Just to run down a brief summary of where that history has taken us, we codified the 6 AAC 50 consistency review regulations in 1984. This set up the first example, and the one we currently live with, of the coordinated consistency review process.

Since 1984 we've had very few changes. I think we've changed only the petition regulations and then something related to that regarding the definition of citizen inherent in that petition regulation package. 18 years of experience has given all the participants a tremendous amount of opportunity to explore the good and the bad with the consistency review process. Implementing and the evolution of this program has identified a number of holes that the package, as it was codified in 1984, have not addressed. Although at that time it was a good package of regulations, it's clear now that we need a new set which addresses the current practices, which addresses the current issues, and which brings the regulations up to date for our current processes.

The package that we have crafted and put before you in this packet is a very comprehensive package of regulations covering all aspects of the consistency review process. There is essentially nothing left out that would come under the umbrella of the consistency review process. We've tried to think through every caveat and occurrence of the review process or question that would be out there. And 55 pages later, I think we've addressed a lot of those concerns.

This package of regulations is essential to continue the success of the ACMP. It is necessary to capture the current common practices that we go through as the network to process. The package is necessary to address the holes that have been identified in the consistency review process. In crafting this package, we need to comply with the federal and state laws and statutes that have changed, and we absolutely need to provide a comprehensive and predictable consistency review process for all of the participants that are involved with the consistency review process.

There's just a couple things I want to go through today for you. First, I want to go through some general changes that the package is bringing out. For those of you who were here last night, we went through this in a little more detail. I just want to gloss over this, give you some general changes that are out there. I want to discuss more in detail the process we went through over the last three years in developing this package of regulations. I want to let you know how much public involvement and the steps that we've taken to make sure that we've got to the point we have with everybody on board. And finally, I'll summarize the recommendation that myself,

as staff to the council, is making for you to consider.

Okay. We'll go into general changes within this package. You'll recognize that in this package, which is DGC Draft 14, dated June 2002, everything under the sun is in here. We've got the current regulations as they exist, and we've got the proposed regulations that are before you now. It was put in the entire package so anybody could see the changes that were being made, the deletions of the current language being made, as well as the addition of new substance.

When we started crafting this package there are sideboards that we have to operate within. When we applied for the grant back in 1999 it was specific to addressing 6 AAC 50, that's the only box that we were trying to dig in. We wanted to address the consistency review process and the entire chapter of 6 AAC 50. In order to do that, we have to comply with the Coastal Zone Management Act of 1972, as it's been amended. That's our federal act that laid out what the program is. We have to comply with the federal regulations at 15 CFR 923 and 930. These lay out the federal processes for consistency and program development. We also have to comply with our own Alaska Statutes at AS 44.19, AS 46.40, and other resource agency statutes as appropriate. The other sideboard that has been provided to us as far as keeping within the context of 6 AAC 50, are the court cases that have been delivered over the last several years of the program, as well as attorney general opinions that are relevant to the consistency review process.

So, clearly, our grant and our purpose with this package was so solely to address the consistency review process within those sideboards of the guiding authorities. We recognize that there are a lot of interests to address areas outside 50 that relate to consistency, but that was not our purpose with this package. We are simply focusing on the consistency review process. We have, within the context of those federal regulations and state statutes, been able to craft a comprehensive package that rewrites the consistency review process and coordinates project reviews.

Within those guidelines, I just want to run down some of the changes that have been made that are beyond what the current regulations are. So we've got this package of regulations that's currently in place. We took that, made some amendments to beef up the clarity, beef up the consistency, beef up the predictability of the package. And now what I want to do is just run through a list, just very briefly, of what those changes are that are of substance. I imagine that many of these topics that I address today, you will hear in the various testimony that will be delivered this afternoon. So, I just want to touch on these. I would encourage at any point if you have questions on the step I'm discussing, please ask me. I want to make sure that you guys have the understanding of the information so you can make the rational decision at the end.

Just a list of bullets and topics that we have dealt with in here: The federal regulations were amended in December of 2000. These went through a similarly long review period at the federal level to amend the consistency review process, federal activities and activities requiring a federal authorization. Our program is approved by the federal government under OCRM and NOAH; we also have to comply with those federal regulations. This package deals with those changes that have been made, codifies what they've laid out into our own state law so that it's a very clear, comprehensive review process of their activities as well as the state's responsibilities.

As discussed this morning, the legislature of this year passed a number of bills. A couple of those dealt with the ACMP. There are certain aspects within those bills that we needed to deal with within the consistency review process. We've tried to accommodate those changes. Petitions being one of them; the general nationwide permit is another issue that we're attempting to deal with in this package. Those changes are included in your packet. I imagine we'll hear some

testimony this afternoon on one of those.

Another subject we're dealing with is whether a project is subject to the consistency review. There has been, in all meetings that I've been involved with, a clear desire for clarity on whether a project is subject to the consistency review process. There has to be a trigger for a project to be subject to a review. That would be a state authorization or a federal authorization. And then it has to meet a particular threshold of being within the coastal zone of the state or affecting the uses and resources of that coastal zone. It's taken some artful crafting to get us to that point that is compliant with the federal laws as well as our own desires. And we are trying to include that in this package so that it's very clear, such that when an applicant proposes a project they will know clearly whether they are in the review process or not.

This package also deals with the federal regulations, which provide a process for consistency reviews for a federal agency proposing an activity. We're also providing a process in here under Article 4, which is a clear consistency review process for an activity that requires a federal authorization, a federal permit. And we're also including an article in here that deals with an activity requiring only state authorization. So, there are three paths a particular project could take. It's Article 2, Article 3, or Article 4. This is to try and be very clear and be very comprehensive in what a project has to go through in order to be found consistency with the ACMP.

Another aspect that we're touching on in this packet, and this is another one that's been from day one obvious that we needed to address, this is scope of the project subject to review. You'll find this at 6 AAC 50.025. This deals with what are we looking at when we do a consistency review; what activities are involved in the review process, the review of the project for consistency. It is a very controversial topic. You will hear testimony this afternoon. But clearly, we needed to define what scope is in this package so that it's black and white as to whether an activity is subject to review or not.

Another thing we're clarifying in this package is the roles and responsibilities of all the players involved with our package. We want to make sure that the coastal districts know what their role is, how they can play the game. We want to make sure the applicant knows what's expected of them. We want to make sure the coordinating agency, be it DGC or the resource agency, knows what is expected of them. We're trying to clarify everybody's role. The current regulations codified in 1984 were based on a premise of good faith work. We recognize that we need a little more clarity than that.

Another bullet: the development and comprehensive and exhaustive list of state and federal permits. We want to make sure that a project that requires an authorization, if that authorization is on the list that we have codified in these regulations, then it's subject to review. We want to just make that an exhaustive list such that there is no wiggle room. If it's on the list, it's subject to review. If it's not on the list, it's not subject to review. This is a change we're making from the current situation. Of course, that's going to necessitate a review and an amendment of that list to make sure we've got it right. But that's what we're trying to do with this regulations package.

Something we've dealt with throughout the package, throughout the comments, throughout the meetings that we've held, everybody is crying for more predictability in the consistency review process. Applicants want to see some more predictability. The agencies certainly want to know where they stand with the consistency review process. We have heard comments and we've tried to be reflective of those comments and craft language which deals with a little more surety as far determining whether a project is complete, when we will initiate

the consistency review process, how we will stop the clock and for what reasons under a request for additional information, and how stop clocks will actually occur, and why they will occur. You will hear testimony this afternoon that says probably we haven't got there yet. Certainly we have been responsive to the comments to the extent we can, given the limitations that the state and the local governments have.

Something that we're trying to accomplish as well within this package is posting public notices. Every project that goes out for consistency review has to be somehow publicly noticed so that the public is aware of the project and has an opportunity to comment. The current situation is we either have to publish it in a newspaper, or we can post it in a location of the district. We're making moderate changes to get a hold of the electronic medium (ph) that we have. We want to be able to post that on a dedicated website, and in the affected district, or we can still put it in the newspaper.

One of the substantive changes that has occurred since last draft and this draft is the change in how the state is going to be finding projects consistent or not, and what that determination is going to look like. As it currently exists, the state issues a proposed determination that either finds the project consistent or inconsistent, and then they issue the final determination on that same premise. What we're going to is something more akin to the federal regulations where the state is going to concur with the applicant certification that the project is consistent or the state will object to the applicant certification that the project is consistent. What this also requires, instead of the current situation where alternative measures are developed and then placed on resource agency permits, this change that we're proposing with the object/concur language also requires that the applicant themselves adopt the alternative measures as part of their project description. As part of that project description that's an enforceable component. The alternative measures that were developed do not get placed on the resource agency permits. This is a substantive change from the current situation as well as the last draft that we put out.

We have eliminated the potential for petitions on project specific issues. This is in response to the legislative bill that was passed. What the legislative bill did was clarify an alternative means of petition, which is on program implementation. And so this package not only eliminates the potent for petitions on project, it clarifies what a program implementation petition would be, how it's brought and what the Council is to consider.

In addition to that we've also dealt with the elevation process, now about the only appeals process under the ACMP. We haven't provided any greater clarity than what we currently live with. We do allow that for an elevation of a project that they can bypass the directors and go straight to commissioners, if they so choose. This is a change that I think everybody was looking forward to. The issues in an elevation are just beyond the regional level staff, let's go straight to the commissioners for a decision.

A couple more points: back in Article 7 you will find that we are including the authority, the application, the implementation and the amendment review process for the ABC list, general permits, nationwide permits, and other state and federal authorizations that would be subject or trigger a consistency review. We currently have very little language that deals with the ABC list, it's codification and how we implement it. And what we're trying to do with this package is make sure that that authority was clear and it would provide a clear and responsive review process for including things or taking things off of those lists.

Another area that is completely silent in our current regulations is the renewal of a permit or authorization and the modification of a permit or authorization. There's nothing in our current regulations that deals with that. This package here clearly lays out the review process, the

analysis process for determining what is subject to review under the renewing permit or modification of a permit. It's absolutely necessary that we get this in place.

And the last point that I wanted to make and highlight for you is that we are including in this package the appropriateness and process for allowing activities to either waive the consistency review or have an emergency consistency review process in place. This is necessary for certain aspects of public health, welfare, safety, oil spill clean up and other areas like that that would necessitate an emergency, or waiver of review.

CHAIR GALVIN: Over the 20-odd days since we've sent this package out, we have continued to look at the draft and found a number of places where we need to make some changes on our own initiative. And so Randy's going to be passing out some amendments that we had already identified that would need to be brought to your attention even before this testimony would be heard. These amendments have been circulated to a number of the folks who are testifying, and so you may hear testimony on these amendments as well.

Chair Galvin indicated that DGC will develop a new, clean version of the regulations incorporating the amendments, and any other amendments necessary as a result of testimony heard.

Chair Galvin asked for any discussion among the council regarding the regulations. **Mr. Bates** asked if there was an interest in hearing about the process. **Chair Galvin** stated that it would be good to have that information on the record. **Mr. Bates** requested that any written testimony be submitted to him for distribution. Mr. Bates then detailed the three-year process.

MR. BATES: Three-year process. We got a grant in 1999. In January of '99 we applied for it. The specific focus was on 6 AAC 50, within the confines of that package and within the sideboards of what the federal and the state regulations and the statutes are. In July of 1999, DGC began to hold internal meetings. We held about six months worth of DGC meetings, held every two weeks. What we tried to do within those meetings at DGC is take the experience of the project review coordinators, and find out what issues existed, what issues needed clarification, what were the holes in the process. What we wanted to do in starting at DGC is get a handle on what was out there, what needed to be addressed, provide a draft that then people could respond to. What we wanted to do was give something to the other members of this network and make sure that they could help us embellish the areas and respond to what we put out.

We did craft a draft and put that out in December of 1999 to the working group members, which are representatives of the agencies and coastal resource districts, as well as other interested members of the public that had a desire to be involved. That draft went out and we began a review process, holding meetings every two weeks on that, starting in January of 2000 and we continued those meeting through the summer of 2000, crafting a package that was responsive, substantive and comprehensive that we thought was ready for formal public review.

We came to the CPC in November of 2000 and presented the package to you, saying: certainly this is not perfect; certainly we haven't captured everything. But it's good enough, can we please go out for public review and solicit comments? And at that point we did get the blessing to proceed under formal rulemaking procedures of the Administrative Procedures Act. So we put the package out for public review and let the public comment to us. We released that in December of 2000 and intended to hold a 60-day comment period. We extended that to 90

days. We held three oral hearings to solicit public testimony and comment on the package. We got numerous and voluminous comments on the package. It was very substantive; it was very productive. The people that provided comments were very thorough in what they suggested; it certainly was reflective of their interests.

We went back, regrouped, reconsidered the comments, and conducted follow-up meetings with those folks that provided testimony or comments. We crafted what we felt was responsive language. We crafted a formal response document. It was very specific. That response document addressed every comment that was made and gave a very pointed response to it, and we completed a complete redraft of the consistency regulations. So it was completely overhauled, rewritten entirely to be responsive to the comments.

Prior to the formal second release of that, we wanted to make sure the public members had an opportunity to understand the changes that we made and the rationale as to why we made these changes. So we held a couple of meetings, workshops open to the public and invited everybody to hear us talk and then question what we were doing. They were relatively well attended, and it gave us an opportunity to provide a rationale for the changes that were made.

Following those public meetings we did release the redrafted package for a second formal public review. This was in October 2001, and it was a 75-day comment period. Again, we got numerous and voluminous comments. This was an improvement, but it certainly generated a number of comments. All of the comments that we received on this package during the first review and during the second review helped compile the majority of the packet in front of you.

What is before you now is our response and our consideration of the comments that were submitted on the October 2001 draft. We have taken that draft, looked at the comments that were submitted, recrafted it and now we're presenting it to you as the Council. There are a few additional amendments that we find necessary to get this package in better shape and near finality. I would say that there's truly only one reason that this package is in front of you guys today, and that is the hard work of all the participants of this network program. It's the working group members, it's the districts, it is the affected public, the environmental community, the industry, the coastal resource districts. You've seen in the comments how engaged, interested and involved participants in this program are, and it's a testament to their dedication that the package is in the shape that it is today.

This package is considerate of the participant needs; it crafts the coordinated consistency review process in a manner that strengthens and clarifies the networked consistency review process. This package is necessary to continue the success of the ACMP. With that, over the course of three years, I will offer a recommendation. Recognize that the recommendation that I put in your packet is probably not the recommendation that I'm going to make right now. We had asked for your action and approval on this package.

Where we're at right now is we're not asking for action. Participants have identified remaining issues that we feel we do need to address, with them or within the package to make sure that we get it right and we have participant support as we take this to you again. DGC's recommendation today is that you consider this package that's before, you accept testimony on the package from those interested members who want to testify, you direct DGC to consider the points raised in the testimony today, the DGC prepares amendments as appropriate based on that testimony, and that you take action on this package in a meeting scheduled sometime in July of 2002.

Chair Galvin opened the floor for questions regarding the process thus far. No questions being raised, Chair Galvin opened the floor to questions regarding substantive issues addressed in the regulations package.

Mr. Dennerlein expressed thanks to Mr. Bates for his hard work, clarity of writing and organization of the regulations package. Mr. Dennerlein then addressed the issue of the time line for finalizing the proposed regulations package and deliberating any issues that may arise.

CHAIR GALVIN: My expectation is that we're going to hear substantive comments from a wide variety of perspectives. Frankly, I think that it would be not within this body's affective use of their time at this point in the process to attempt to deliberate these issues without providing my staff the opportunity to try to craft something that may satisfy these things. Once you get into a discussion mode, then things start flying and you're as much trying to figure out where you are in the discussion as you are actually moving towards a resolution. And at this point, I don't necessarily see an advantage to putting things to rest before this body at this time because having done this for three years now the one thing I've come to appreciate more than anything else is how interconnected all of these issues are, and that it's very difficult to just isolate one and say, okay, let's satisfy this one and then we'll leave the rest for further discussion. I think ultimately we're going to have to handle this package as a package, and I don't think that's today.

Chair Galvin then discussed the list of those wishing to provide public testimony, and the possibility of time limits.

Chair Galvin then opened the meeting to public testimony. Public testimony was taken from the following individuals in the following order:

Mr. Dan Bevington, Kenai Peninsula Borough

MR. BEVINGTON: We've tried to be faithful to the process, to be a participant for these years as this package has been developed. We recognize the importance of it. We're very concerned with the potential impact of the regulations, if some matters aren't addressed in them. If you look back to a couple years ago, our comments primarily focused on including the affected coastal district and the determining of the scope of these projects, and implementation of the program. The process is unique because it has provided the opportunity for average people, not statesmen, to have involvement with resource management decisions that affect their lives.

One of the concerns that we have with the proposed package is that it begins to formalize more of the distance between the state governments and the local voice. I'm at a little bit of a loss in terms of I'm not so inclined to go through line by line. I have gone through the proposed regulations line by line and I believe that the staff at DGC is aware of that.

Determining the scopes of the projects is a critical juncture in this process of evaluating projects. And thankfully, as of recently, it appears that DGC is proposing to include the districts. But it also includes the CRSAs and others as well. One of the things that we're seeing in Kenai Peninsula is that as we have more developments and activities, more interests in the resources and utilizing them, more people are becoming aware of these processes, and they want to have a voice. For example, in Homer the Homer Planning Commission wants to participate in this process on some level. Well, of course, timing becomes an issue we start to talk about the schedule that's laid out. And from a district perspective we want to accommodate that. But we

can't if we're not included in some of these early determinations in terms of making sure that the scope of the project has been adequately defined.

And these regulations, it appears that DGC retains the right to determine the scope. And we don't contest that at all. What we do want to express though is that we would like to see, and it's in the regulations, the state agencies are responsible to coordinate with that local management group, the district or the CRSA, or some other local management group that's recognized as a review participant.

We have seen that change in these amendments, but they refer to, or it appears to me that they're limiting that discussion to a single agency reviews. I may be incorrect. So, it's just critically important in our communities that, and especially as in the Kenai Peninsula Borough, as the populations increase and utilization of it's resources increase and intensifies, that the coordinating agency, whether it be DGC or a single agency, should consult not only with the applicant and the other resource agencies, but also the affected district. That's what we believe and that's what we'd like to express.

We'd also like to state that when possible the standards that are expressed in here should be consistent with the federal standards. And 50.005, section 2(b) and (c) they reflect two different standards for the review criteria. And I've discussed this with the DGC staff, and you may have some different views of it. So, I'm just going to express it again and leave it for you to consider. When any project involves federal actions or permitting, a single standard should apply. And these two sections confuse the matter by using the words direct and significant in section (b) and will likely have reasonably foreseeable affect in section (c). The code of federal regulations utilizes the latter, and we believe that we'd like to see that consistent through the document, so that when we are faced by difficult decision-making situations that that's not a point of confusion some time later when we don't have this body of people sitting on the Council or certain program administrators in place.

The numbers changed on these over time, and so I got a little confused about where the same changes happened in the new regulations. And I do agree with Chip that I think you've done a pretty good job, but I'm confused because I try to reference the same number in many drafts and it's very hard. I hope I'll have an opportunity to look at the final new draft and have that opportunity to comment line by line at that time. I feel like I can do a better job of responding.

The Kenai Peninsula Borough has a great number of reviews that we address, and limited staff. And trying to work the other staff within the Borough, but everybody's got their own responsibilities. So it's been very challenging to cover not only the normal review schedule, but also keep up with these changes. We went through some federal changes. We really try to keep an eye on what's happening. And so, I feel a little bit at a loss.

Let me bring you to the last matter here. In Section 50.225 we believe that the air quality permit application must be submitted to the Alaska Department of Environmental Quality prior to the commencement of an ACMP review. Not necessarily that it be completed by the DEC, but that the application be completed and submitted before that. The hazard is that we would end up with potentially conflicting findings. It would be beneficial to a responsible review to have that completed application in place.

If you'll look back at our comments over the past couple of years, our main concern is that the district or the local recognized body has a voice when we're discussing scope because that can come back to us at a later date and be a problem. So, that's all we're trying to express. At the conclusion of Mr. Bevington's comments, **Chair Galvin** opened the floor for questions.

MS. RUTHERFORD: Can somebody read me what the actual definition under 46.40.210 is for districts? I mean, it does include the CRSAs as well as the Category 9 districts, correct?

CHAIR GALVIN: Yes.

Mr. Kurt Fredriksson inquired of Mr. Bevington, regarding whether he envisioned "networking to also embrace local authorizations at some point?"

MR. BEVINGTON: That's exactly the direction we're headed down there. We've been seeking to have our local authorizations consistent with our own program policies under ACMP. One of the things in earlier drafts that concerned us was that it appeared that the state was going to require us to do that, and that didn't seem like t most prudent thing for us to endorse, at this time anyhow. That is exactly the direction we're headed. Our local assembly has adopted habitat protection ordinances. We have various other resource ordinances that are in their infancy right now. But one day we'll be able to take some of these policies or standards that we've been working with under the ACMP and more effectively administer them under our local authorizations. We have been working extensively with not only state agencies but also federal agencies to highlight the concerns and interests in the ACMP policies.

MR. DENNERLEIN: I'd like your answer to this, both a question and a point: I think you raised a couple of things that are hand-in-glove with the new regulations package. And what struck me is your comment that the value of ACMP allowing average people to be involved in the resource management decisions. And I think it's inevitable when you tune up regulations like this and you're dealing with such a variety of industry and federal laws that they become more formal. I think we want to be conscious of not formalizing, as you said, a distance between state agencies, resource professionals and industry lawyers and the rest of the world that lives with these communities and the decisions. First, do some things like the Web posting and some of the information spreading help address that? Some of you comments go to regulations, the way they were written, and some of them may go to communications, guidelines and training. I'd like your views on that.

MR. BEVINGTON: We've been very appreciative of the willingness of DGC to reach out just exactly like you said, to help us as the small people, to understand how things are going to affect us, how we can be effective, and how we can better understand how state and federal regulations affect our lives. And I would be in complete agreement with what you said about the bigger picture of how we can carry this program forward without separating the print from the interactive part. These words are important and they'll live longer than we'll be involved, and just recognize the significance of that, given the importance of our resources.

No further questions being raised, the session was recessed for lunch.

LUNCH BREAK
12:05 - 1:25

Chair Galvin asked to go over schedules in order to determine the best date for the next meeting. Discussion ensued and it was determined that a full day meeting would take place on July 23rd, with an evening briefing on July 22nd at 6:30 p.m.

Considering the number of people signed up to testify, Chair Galvin requested that each individual restrict their testimony to 10 minutes, and questions be restricted to 5 minutes.

Ms. Hunt then took roll and a quorum was present to conduct business. Public testimony was then continued.

Jeff Leppo, Alaska Oil and Gas Association

MR. LEPPO: I would like to emphasize in giving these comments that there are written comments that have been submitted. Judy Brady, the executive director of AOGA did submit written comments on the 19th and there are two attachments: a section-by-section analysis, and then a diagram.

AOGA recognizes the time and effort that has been put into this process. We appreciate that and we know that genuinely good intentions have been brought to this process. AOGA has been intensely involved in this throughout the time period in an effort to see that these reform measures are the best that they can be. We are pleased to see that the goals that are established for these procedural regulations are the right ones. Randy's memo to the council sets out what those goals are. And they are: to provide up-to-date regulations that are clear and efficient; to establish and clarify the process to evaluate a proposed project; and to create a predictable consistency review process for proposed development projects.

I think that's so important to say it again. It speaks to a clear and efficient process, a clarified process and a predictable consistency review process. So the defining principles are coherence, efficiency and predictability.

I don't think there's any way to soft-pedal our view at this point of these current drafts, and I won't try to do that. But I do want to say that as difficult as it may be, having been involved in this process for three years, to hear harsh criticisms - and some of these criticisms are harsh - it's hard to deliver them also, having been involved in this process, because we want our comments to be constructive and we want this process to succeed. And so, it isn't a pleasure for us to be harsh in our comments, but we want to be direct with you about the nature of the problems as we see them.

AOGA reviewed these regulations carefully, and the standards, and we reluctantly found that they are not coherent in key respects, and that they are not predictable in key respects, and they don't establish an efficient process in very key respects also. We asked questions with respect to these regulations, like does the ACMP apply? And, how long will it take to get through the ACMP process? And we found that we couldn't answer those questions. And we didn't struggle in that respect. There are cases today, projects today, the TAPS reauthorization being the example where there was a huge struggle about whether the ACMP applied or didn't apply to that project. And there are other examples.

And then we tested our reaction to these, that they weren't predictable, coherent or efficient in key respects, by talking to other stakeholders. And we talked to quite a few of them. We found that they had the same conviction that we did. And so that suggested to us that we weren't missing something. They seemed to be in uniform agreement. The conclusion that we reached, reluctantly

so, but nevertheless uniformly so, is that these regulations are fatally flawed. They're flawed in these respects: instead of a program of defined, which is to say predictable, scope, there's a program of indefinite reach. We cannot determine whether the ACMP applies or not to specific projects. Instead of a program with scheduled discipline, there is a program that institutionalizes discretionary delay. We cannot determine how long it will take for a project to go through the consistency process. And instead of a consistency review process that is just that, a process, these regulations establish a pseudo-permit, and that is precisely what the legislature indicated they did not want the consistency review process to become.

So, having reached those conclusions, we have to tell you we think these regulations are absolutely unsupportable in their present form, and that they require revision. And these are not small issues, I think that's obvious. They're very fundamental, and that's especially true because there are vast coastal areas. So we're talking about a program that has a significant reach however you define the scope and applicability of it in this state.

It's important because this isn't a program that is just enforced or affects one agency. It isn't just DGC that interprets these regulations, so that if DGC has a clear idea in its own mind of what they mean then that's adequate because all the resource agencies end up enforcing this regulation in an individual permit context. And the federal government has got to interpret this when it deals with federal projects, and not just one agency but multiple agencies. And so the resource districts have got to interpret it. So this is a program where clarity and predictability is not only important to the party that's developing the project, but it's really essential to the regulatory agencies that are implementing it. Otherwise you've got case-by-case determinations on projects by multiple agencies and you get different decisions.

Having said that, I want to say that we think that achieving efficiency and clarity and predictability is not rocket science when it comes to this program. We think that the regulations can be clearly written in a way that has definitions that add clarity and meaning. We think that the regulations can be predictable. And so we're not here to say that you can't fix this. You can fix this and we have previously provided, and I'll provide again today, some specific recommendations about the way to fix this.

And there are two general principles that I urge you and DGC and the staff to think about when they go back and look at these regulations again. Making these regulations efficient and clear and predictable requires making some choices. You can't satisfy everyone. Randy already knows this. He's not trying to satisfy everybody. But to some degree these regulations reflect an effort to try to get everybody under the tent. And that's a laudable goal, but you can't.

You cannot have predictability and limitless discretion. You cannot have predictability and limitless reach. You've got to make a choice. Is it that the coastal zone is a 100 foot setback, like it is in some states? Or is the coastal zone everywhere so that it encompasses the entire state of Alaska conceivably, and all the adjacent federal waters? And those are the choices. And you can choose the latter. You can say that conceivably the program applies anywhere in the state of Alaska, and it applies to the contiguous federal waters. That's not a predictable program. That's a choice, but it's not a predictable program. And you've set that up as a goal, and I think it's the right goal.

You cannot have predictability and limitless delay. Here again, you've got to make some choices. You can decide that this program, the consistency review, will take five days. You can decide that it has an infinite amount of time to be completed. And there's a lot of ground in between. But you can make a choice. You can decide it's going to take 50 days, or you can decide it's going to take 40 days. You can decide that you will decide when it starts. These are things that are choices and you can make them. But you can't have it all, and you can't be all things to all people.

The second thing that I would encourage you to think about besides making choices is to work within the known and established public policies of the legislature. These are regulations that we're talking about, not laws. They're supposed to implement established policies. Even more so, they're procedural regulations, not substantive regulations. So they're focus is even more narrow than that. This is not the place to change public policy without legislative guidance. And we think that that's occurring, and I'll explain how.

If you don't do these things, if you don't make some choices, if you don't follow the legislative guidance that exists, then what's going to happen is you're advocating, in our view, the coastal zone process to the courts. Ambiguity and unpredictability in this context encourages litigation. And we already see that under the old regulations, which we're all in agreement are unclear, they're not comprehensive and they need to be revised. And the process that's going on here is something to definitely be encouraged because the old regulations don't provide what this state is entitled to.

Litigation polarizes stakeholders. These are things you all know. It polarizes stakeholders, it consumes agency resources and it delays the process. Ultimately, the judiciary, which is the one who ends up deciding these things if you have ambiguous and unpredictable situations, they don't have the expertise and they don't have the feeling on the ground of what it's like to have to permit. And so they make finite, specific, controlling decisions that don't reflect the considerate thinking that an agency like DGC and a commission like the CPC are supposed to make and are capable of making.

Let me talk about specifics. In our comments, we talk about three things in particular: applicability and scope; homeless stipulations; and scheduled discipline. Let me talk about applicability and scope first. The ACMP was intended by the legislature and is required by the existing statutes to be a program addressing specific uses and specific activities within definite boundaries of the coastal zone. This is an area where predictability is of it's greatest importance. You have lots of agencies in the mix here making decisions about what is consistency. You've got state resource agencies, you've got DGC, you've got the resource districts, and you've got the federal government and multiple agencies of the federal government at that. And so, the importance of determining what's in and what's out could not be more critical in this context. If you can't fix this there's no way to support these regulations because everything starts with understanding applicability and scope.

Four particular issues. I'll talk about the inland boundary of the coastal zone. Federal law is explicit. It says that the inland boundary must be presented in a manner that is clear and exact, clear and exact enough to permit determination of whether a property or an activity is located within the management area. In this state we have a defined coastal zone. It's exact. It tells you exactly what the boundaries are, and it was defined to be the area of direct and significant impact. These regulations don't just regulate those areas. Instead, they go on to regulate an area which is undefined and is further inland and which apparently is the area where direct and significant impacts on the area of direct and significant impacts may occur. It's a second layer beyond that.

Okay, you can do that. But when you do that you are not complying with federal law because you don't have an exact boundary. You are not implementing what the legislature intended, and you are not achieving predictability. It is unpredictable when you say that I'm regulating the coastal zone and I'm regulating everything else if I decide, without standards, without going through any process, that there maybe an effect by things that are out there on things that are in here. This is a choice here. In other states, they've made a choice. They've said, this is the coastal zone, and I'm going to regulate in this area. These are the areas where I think if a project occurs we want to take a

look and see whether it's consistency or not. Some places it's 100 feet. If you want it to be 100 miles here, that's your choice. There's a public process for doing that. But that's a definite boundary. Today we don't have one, and these regulations don't create one. So the choice here has been, so far in these regulations, to be unpredictable not predictable.

Let's talk about scope. It's section 50.025. Subsection (c) and (d) are the problem that we have because subsection (c), frankly, I read this and others read it, members read it. We didn't understand it. I came up with and they came up with three or four different understandings of it trying to come up with what the intent was here. And then Pat gave me his intent, which was completely different from that. What we come down to here is this section seems to say that having already defined in some respect, and I would say not sufficiently, what projects fall within this program and what the scope is of those projects, that the state is going to allow coastal resource districts to expand the scope of this to something else in their area. So that the state is choosing not to decide what the scope of projects are going to be within the ACMP, is going to allow that to be different in different coastal resource districts, and it's going to allow them to make that choice. And I think that is wrong. There are areas where it's appropriate for a coastal resource district to decide on a coastal district by district basis what are their enforceable policies. But the scope of this program is something that the state ought to decide. And that is the only way to have predictability. Otherwise, we have a situation in which it's different in different areas, and by this very term, 025(c), we inherently cannot determine what the scope of a project is going to be because it's left to coastal resource districts.

Subsection (d) in my mind says, what would be the case without that section being there, that you're going to consider all the facts of those things that are in. And so when you put it in here and you say that, there's a rule of construction that courts apply, which is you can't have language that is superfluous, that doesn't have any intent. And since the intent seems to be that which would be the case without this language, I think you can be assured that a court will try to give some meaning to this. But I don't know what that is, and you don't what that is either, and I don't think that's your intent. So I think it should come out.

Third point about scope and applicability, the definitions. I'm going to focus here on one. It's the term "activity." First of all, fundamentally the concept of definitions is that you are explaining to people what you mean, that you're narrowing. But it gives you additional meaning than the word that is there. A lot of the definitions just say that it's as expansive as it could be. And that's not really defining anything. That's just saying that we're not defining it, that we're leaving it to the courts or we're leaving it to discretion, that we're not providing predictability. The term "activity" in here came, I believe, from a federal definition of the term federal development project. It's out of the federal regulations. There's a difference between a federal development project where the planning activity by the federal government or a sale or lease of property by a public agency. Those are things that you might want to consider in a coastal resource program, the public component of the planning process, or the public component of selling or leasing land. But when you apply that term to private activity, what you're saying is planning.

Well, companies plan all the time. That's an activity as defined by this. They don't always seek permits though when they do that. Many times they don't. Do you really want to bring within the scope of this program all the planning activities of private companies? I don't think so. That's not what the legislature intended. Do you really want to bring into the program every time somebody plans to sell or buy something that could be defined as a coastal resource? Frankly, subsistence qualifies as an activity under this.

There's other qualifying language in here which deals with what's within applicability so that it narrows it. But that term doesn't provide any useful information. Frankly, it just says it's everything. And then you have to look to other terms to narrow it. So it's not serving any purpose here. And it allows for an interpretation which is not predictable.

The last point I want to make applicability and scope is there used to be a provision in here which was removed by the revisions that came out last Friday about incorporating federal lands. And because you're going to go back and think about this some more, I just want to be clear on this point. Federal law could not be more explicit that federal lands are excluded from the definition of a state's coastal zone. Here's what federal law says: the boundary of a state's coastal zone must exclude lands owned, leased, held in trust, or whose use is otherwise by law subject solely to the discretion of the federal government, its officers or agents. Until a week ago, you were defining in federal lands as part of your coastal zone. And then you have a definition of coastal zone which threw federal lands back out again because it incorporated by reference this language. That was incomprehensible. I think it's been fixed. But I want to emphasize the importance of maintaining that fix because you would be in violation of federal law if you kept that in.

Let me move on real quick. Scheduled discipline. I sat back here and I absolutely love this drawing up here of the coastal zone process, which is behind some of you. It's a seven-step process. If Randy wrote this he should be a trial lawyer because it's simple, it's understandable and it ends with a smiley face, so it's got a happy ending. This is the story you always want to tell as a trial lawyer. It's short, it's simple, it's got a happy ending.

This is another version of that process. This is another vision of how it works. That process, minus the smiley face, is not inaccurate in the sense that it describes the seven steps of the regulatory process. This describes in practice how it works and these circles here are big problem areas where you've got indefinite clock stoppages, where you've got areas that are so indeterminate and unpredictable that you can't figure out where you're going. And this is not designed by me. This is designed by people who go through the permitting process. This is the way it looks in practice. That's beautiful. I love that. But this is what's happening. And this is not efficient, and it is not scheduled discipline. And you can have scheduled discipline, you just have to make choices.

Lastly, let me talk about what we call homeless stipulations. This is a very frustrating area for us. We commented on this before and there was an effort made to change the process to be more like the federal system. And in format it is. But on your web page you indicated the change was semantic, not substantive. And, indeed, that is true because it didn't change the system.

The legislature, when it set up the coastal zone process, said - and this is in our comments last time and this time - it said it didn't want to create another permitting process. In California they have one. They have a permit you have to get for coastal zone consistency. In Alaska we don't have that. The legislature didn't want to create that. This is a review process and there is an opportunity to see whether you are consistent or not.

And so we proposed regulations which eliminate the concept of homeless stipulations which now exist, which is to say restrictions that are imposed on projects which are beyond the authority of the regulatory agencies that are issuing the permits. And we talk about all this process here, but outside of this process, projects are seeking approvals. That's how you get into this. You're getting a federal approval, you're getting a state approval, maybe multiple approvals. When that process is all going on the public is participating and you have underlying authorities under state law about what you can and can't do. Homeless stipulations are things that are beyond the authority of those agencies to impose. And what we believe is appropriate, and this is consistent with the federal system, is that if you, if a commenter, if an agency takes the position after a CPQ has been filed

which certifies that that company believes that consistency has been met, then the burden is on the commenter to be specific about what enforceable policy or what statewide policy is not being complied with here; how the project doesn't comply with it; and why that inconsistency can't be corrected by existing law because the legislature was very clear that it wasn't creating new law.

So how come the existing authorities can't resolve this problem? Because I think they can almost in every instance. And if they can't, then to indicate what the alternative measure, and that's the code word in here for homeless stipulation, is and how it addresses the inconsistency and how it corrects it. And then the system is to allow the party seeking approval some flexibility. Rather than imposing it in their permit, they have several choices. They can modify their proposal to adopt this. They can come up with some other way of solving this problem, because after all it's their project and they would know better than anybody how they might be able to modify it to achieve consistency. They might propose something different, or they might decide not to do the project. But those are all choices that the applicant makes, rather than having them imposed in a permit through a pseudo-permitting process. And that's what's in there now. And the current regulations as proposed, no doubt in fully good faith, are as they are described on your web page: they are semantic, they're not substantive, they don't make those changes, they don't shift the burden, and they don't make these voluntary.

I just want to close, and I want to emphasize five points. Again, we know a lot of good faith and effort has gone into these and we respect that effort, we respect the people who've gone through that effort. We don't minimize for a second the years that went into this and the good intentions of everybody who's been involved in it. In one sense, when I read these I have the sense that the importance of the resource is clearly there. And they are. But these are procedural regulations. These are the regulations for the permitters. And the people who wrote these regulations, as far as I can tell, weren't thinking like permitters because you need predictability, you need to make choice. You have the legislature's guidance about what those choices ought to be. You're the council. You make some choices about what those are going to be. But you make choices, you don't make it unpredictable. You don't leave the schedule open. You don't leave applicability up in the air. And you don't leave it to the Supreme Court to decide how this program is going to be managed.

These proposed regulations are really flawed. They are, and we oppose them. And we're not just raving. And we went around and we talked to a bunch of other people, and they really agreed with us. And that's the honest truth. And we're not bluffing. I mean, these really don't do it. But they can. And that's the other point. They can. I'll hand to Randy some very specific changes to 005, the applicability section, to 025 and to other sections dealing with homeless stipulations that are very specific. We provided them in some form before, but these relate to the specific language we've got in there now. And they’re not that complicated, and they're not that difficult. But it involves deciding that this is the coastal zone. Whatever it is, this is what it's going to be and we're going to make that choice and we're going to say things in this area are in, and things in this area are not.

And lastly, I want to say that we are willing to do whatever we can in the intervening two weeks to work with you to see this come to an end where something gets adopted. We want to do that, within the limits of what's appropriate under the administrative procedures act. We're available to clarify our comments. We're available in providing specific language. But having said that, we are skeptical that two weeks will do it. We don't want to see this process go on forever. We're not trying to delay this into the next administration, or endlessly. That doesn't serve our purpose, because like everybody says the current regulations, they're not adequate. We want to see something done, but I think we have to say that there's a lot to accomplish in two weeks. And we are quite

honestly uncertain that even with the best of intentions that that's enough time to address the significance of these problems.

At the conclusion of Mr. Leppo's testimony, **Chair Galvin** opened the floor for questions.

MS. RUTHERFORD: If the agency that is concerned about the consistency of a project doesn't identify alternative measures, how do you escape that exercise of the wrong rock? How do you get away from that exercise? To me that is counterproductive.

MR. LEPPO: I'm not sure I understand your question.

MS. RUTHERFORD: Well, somebody comes back and the agency says no, I'm sorry, that's not consistency, but they're not giving you any detail of why they don't think so. I understand the burden's on the agency. The agency says no, these are the reasons why it doesn't meet this. Good luck about figuring out an alternative here. We're not going to give you any measures. And then they come back and say well, here, we think this fixes it. You get into that's the wrong rock. You've just picked up the wrong rock and you're not there yet. How do you escape that if in fact there's no homeless stipulations identified?

MR. LEPPO: Here's what we proposed on that specific language: we propose that if a review participant objects to the consistency, this is what they need to provide - they need to identify the applicable enforceable polices with which the review participant finds the project inconsistent and explain how the project is inconsistent with those policies. They would have to explain why the project cannot be consistency using existing regulations and authority. And third, that they identify any measures that would make the project consistent and explain how those measures would achieve consistency. So, if a review participant wants to comment that you're inconsistent, these are the things they should provide.

MS. RUTHERFORD: It seems to suggest that in fact during the consistency determination process the agencies would have to identify what condition, what permit conditions, they would link to that consistency when they go through their permitting. Is that what you're suggesting, that those conditions be brought to bear during the consistency review?

MR. LEPPO: The agencies already have their independent authority and their permitting conditions. What I'm saying is that if they're going to find that this project is inconsistent and they're going to find that they don't already have the authority to condition it in a way that is satisfactory, then they've got to be specific about what that is. And they have to give the applicant the opportunity to find a way to get consistent. They have to suggest something and the applicant gets to consider it. Maybe they can come up with a better way of getting consistent. Maybe they'll just adopt it. Maybe they'll abandon their project if it's too costly or onerous, or it can't be done. But that's their choice. We're dealing with not just our preference, this is what the legislature determined would be this process. And in fact it's the model that the federal government follows, and it works. All we're saying is the burden needs to be on the proponent of a homeless stipulation, of a condition that is unauthorized by any other law in this state.

CHAIR GALVIN: You're saying that you want to see a justification for the project to have been found inconsistent initially, as it was proposed?

MR. LEPPO: More than a justification. You can summarize it that way, but I think it's important to be explicit.

CHAIR GALVIN: Well, let's look at the language that is in the proposal that's before the Council now. In the section of the regs it's page 19. It's on section 260, proposed consistency determination. We're at the point where it says, in addition to the requirements of (f) which require you to include in the consistency determination the description and the scope and whether you object or concur, if the state objects the coordinating agency shall notify the applicant of the objection and shall include in the proposed determination a statement as to how the proposed activity is inconsistent with the specific enforceable policies of the ACMP, (2) the specific enforceable policies and rationale, or the inconsistent finding. And I guess what I don't understand is how that differs from what you're asking for, at least in that initial step.

MR. LEPPO: The way it differs is that I don't think your proposed regulations impose the burden on the agency or the proponent. Ultimately, as you go through this process, it still imposes the burden on the applicant. This also doesn't address why it is necessary to do it as a homeless stipulation or alternative measure, as you use the term, as opposed to under existing law. Those are two important points: why it can't be done under existing law, and who's got the burden.

CHAIR GALVIN: At this point, I'll say that I haven't read your comments yet, but I guess I'm not persuaded that what is written here does not put the burden on the agency that was issuing the consistency determination, that they have a burden to prove that the project is inconsistent. And that was the intent of the language, and I still think it's there.

MR. LEPPO: I think it's very helpful to hear you say that. And we propose some language, which I think is clearer. If that is your intent, you should have no trouble with our language. The other thing that I have to say, and this is true about applicability as well as about this, these concepts are throughout. There a couple of key provisions you want to look at and then you've got to back and make it consistent every time it appears. Applicability is defined in 005, but it comes up about a dozen other times. And we gave a footnote citing those. Homeless stipulations, or this concept, cascades throughout. And you've got to go back in and make sure that that's your intent, to put the burden, that all the provisions are consistent that way.

Mr. Dennerlien gives an example of a situation using homeless stipulations, regarding a project building the Glenn/Parks interchange, flooded wetlands and Coho salmon. Mr. Dennerlien states that this is not an easy process, but does not see a very good alternative to homeless stipulations.

MR. LEPPO: My responses are along this line: first of all, we do have some limitations to what we can do here, some boundaries. They're appropriate and they are public policy boundaries set by the Alaska legislature, and to some degree the federal government also. One of the boundaries that they set, notwithstanding current practice, is that this is not a permit process, not a pseudo-permit process, not a real permit process. Alaska legislature are the ones that get to make those choices. To the extent that your point goes to the homeless stipulation process, where it's better than what they

set up, pardon my response, is it's the law. And we ought to try to make the law work. I'm not saying we ought to throw up our hands and say good law, bad law. It's the law and I think we ought to make it work, and we ought to look for a system that works within what the legislature set up. Second, we don't contemplate a system in which communication stops or doesn't exist, or which you would be forced to engage in some artifice to ensure that a resource is protected. We think that protecting the resource is important. We think there are a lot of ways to do that and we are convinced that existing systems provide for that.

Mr. Boyd Brownfield agreed with Mr. Leppo's testimony regarding homeless stipulation. He stated he had real concerns that homeless stipulations can be given anytime, anywhere by any resource agency to stop the process, whether it's legitimate or not legitimate.

Ms. Marty Rutherford stated her desire to have further dialogue outside of the public testimony process.

Chair Galvin explained the need to clarify the testimony in order to find a way to satisfy the concerns raised, and to try to find common ground. Then Chair Galvin asked for clarification on AOGA's position regarding the state's authority through the coastal management program.

MR. LEPPO: I believe it's AOGA's position that if there's a duly adopted enforceable policy that it can be determined that a project is inconsistent and that inconsistency determination would prevent that project from going forward. So, if there's an enforceable policy, whether the North Slope Borough's, it's a statewide policy or wherever, and that project is inconsistent and doesn't get consistent, that project doesn't go forward. Clearly it was intended that there would be enforceable policies. What the scope of those enforceable policies can be is a whole other issue, which these regulations don't address.

CHAIR GALVIN: When you say that the process is indeterminate, is it strictly because of the potential for clock stops?

MS. RUTHERFORD: Or requests for additional information?

MR. LEPPO: It's the combination of those. It's also about starting the process, although I think you went a long way toward trying to fix that. I think that there's some additional clarity that could be gained, because you added a provision which I understand to say that you're going to make a decision about the adequacy of a filing within 14 days, and then day 1 starts with the public notice. But the regulations don't connect up to say that day 1 is on day 14 also. So there's a gap between saying you're going to make a completeness determination and when you're going to publish your notice and day 1 is going to start. And I guarantee you that projects will fall into that, and people will say that there's nothing here that says that once I make a completeness determination that I immediately have to put out the public notice.

CHAIR GALVIN: Moving on to the issue of stopping the clock during the review.

MR. LEPPO: We gave very specific comments before about the different subsections that we had trouble with, the most obvious of which is a complex project, which we think ends up being code

for controversial. I don't think that that is a fair or reasoned basis for saying that there's discretion to decide that the clock is going to stop. There's all kinds of bases in here, including the applicant asking for it. And in the real world, an applicant who wants his or her project to go forward, if there's a need to stop the clock to work through something, is going to do that. There's a need to sit down with you and work out what the conditions are going to be, what the circumstances of the project are going to be, then in the real world people are going to want to do that. But when you say here that as a matter of discretion, without any standards, that DGC or any resource agency can say, hey, it looks complex to us, I guess we're going to stop the clock and we'll let you know when it starts again, that's not predictable and that's not clear, and there are no standards, and that's not a good basis.

CHAIR GALVIN: Is it AOGA's position that you want the Coastal Policy Council to no longer recognize the coastal program's ability to require consistency with projects that are inland of the delineated coastal zone?

MR. LEPPO: You've articulated it your way, but I think the simple answer to that is yes. In this state the coastal zone was defined as the area of direct and significant impacts. There was an original coastal zone designated, and then the opportunity to was permitted to go further inland to the extent necessary to manage a use or activity that has or is likely to have a direct and significant impact on marine and coastal waters. And, in fact, that's what happened. So the boundaries were extended of the coastal zone by coastal resource districts to the extent they felt that there was additional land beyond what was first designated as the coastal zone, to be those areas where it was likely there could be a direct and significant impact.

So that is the coastal zone. And it's a huge area. And that's choice. Fine. But now you've provided that you're going to go beyond that. Not only are you going to regulate the area of direct and significant affects, but you're going to regulate the area where there may be direct and significant affects on the area of direct and significant affects. And that's indeterminable. It's unknowable. And it's case-by-case discretionary decision making by every agency that gets the opportunity. And you cannot decide what's in and what's out. So we're asking you to make a choice. The coastal zone is what you define it to be. There's a process to go through that. There are standards about what's the coastal zone. That's a public process.

MS. BIRD: You're touching on something I thought I had heard you say earlier in your original comments. You think we have made the choice that the whole state is part of the CZM, and that you agree with that choice. Did I mishear you?

MR. LEPPO: You did. I think you made a choice about what the coastal zone is, and it's a defined area. It's a big area relative to what other states have done, but it's a defined area. And then what you have done is said not only are we going to regulate under the ACMP the coastal zone, but we're going to regulate everything else in the state and all the contiguous federal waters and federal lands within the state to the extent that we think that they may have an affect in the coastal zone area.

MR. BROWNFIELD: Simply stated, you're saying we came up with a definition, we defined the area, and then we subsequently turned around and undefined the area?

MR. LEPPO: That's right. We're not asking to change the coastal zone, but there's a process for how you define it. But this other process, this area, that's undefined. There's no standards about what may affect. There's no public process, no legislative guidance, no opportunity to deal with that. It's just discretion. And the effect of that is loss of predictability. And I think that is a poor choice.

BREAK 3:20 – 3:30

Mr. Chuck Degnan, Bering Straits Coastal Resource Service Area

MR. DEGNAN: I want to compliment all the members for diligently doing your jobs. It's a function that's very difficult and taxing. And I want you to know that I'm grateful for your service. Our coastal resource service area was formed in 1980. Our coastal resource service area is on the Bering Sea. Our people are dependent on subsistence resources, and it's critical for their survival for them to have that available to them.

Our concern - we're on the International Dateline, we have offshore development possibilities. State government is a resource that's valuable to us. The federal government is valuable to us. Development is valuable to us because of the nature of our population. Our population, just like any other place, changes. But the highest use of our land and waters is subsistence. It's traditional and customary. It's a long-standing economic basis for it. And the thing that's important to us about our coastal management program is that it gives our communities an opportunity to comment on changes that are being proposed.

Changes are slow in our area because we're in a rural area. We have a low population density, and the utilization of land and waters is extensive. And so it's critical that we have clean air, land and water. And you know, we're happy with the coastal management program because it gives the citizens in our district an opportunity to comment on changes. That's very important.

Now, just like any other place, we have our own special interests. And one of the highest interests is subsistence because everybody depends on it either directly or indirectly, although it's not admitted to publicly.

We have several cultures in our area. We have historic cultures. And an important part of our cultures is notification of changes. And if the state would look kindly on us, it would utilize a local language also. So, if there are changes to be made, the English language is a recent language. Although many people are fluent in it and use it, it's a different dialect of English. And so there's room for interpretation of other people's use of the English language. It's a dynamic trading language. I'm in the process of learning it yet, although I'm an expert in it's usage, I'm still learning how to use it properly.

So, your notice of changes is important. The importance to interpretation of local knowledge, you need to take into consideration, no matter where the project is in the state of Alaska. Although there are statewide standards, you need to tie it to the district that that project is going to be in and listen closely to the local people. They're living there. There's traditional knowledge, local knowledge. And because government changes and your permit issuing people are changing, you need to be able to listen to the people that are living in that particular area where the project's going to be. So, even though a project may be consistent in Anchorage, Alaska, and follows the statewide standards, you need to take it out, and if it's in my district, you need to take some things into consideration that only those people out there know about that particular area.

And so far my association with the coastal management program has been positive. Even though there have been disagreements on what's consistent and what's inconsistent, the process works well. Most of the permits are issued. There's some misunderstandings over definitions of the terms. And I find that even in the English language, even though we speak the same English language, there are dialect differences. And you bring your educational background with you. And so, wherever you happen to be educated, that's your spin you put on it with the English language. So, another impact on the English language is the educational level. So, you need to take into consideration what the definitions are and be clear in your definitions.

As you know, we're dependent on the ocean waters, lands, the rivers and all those things. So we tend to be holistic in our view of the universe. So, that's the nice part of the program we like is the cooperation between the federal government, the state government and the local government. And I want to thank you all for serving on the Council. You fulfill a valuable duty for our people in the Bering Straits Region.

At the conclusion of Mr. Degnan's testimony, **Chair Galvin** opened the floor to questions. No questions were raised.

Mr. James Colver arrived and **Chair Galvin** noted his arrival and attendance for the record.

Ms. Faye Sullivan, Unocal Alaska

MS. SULLIVAN: Thank you for the opportunity to comment. And thank you, Pat, for allowing us to modify the schedule. I think it was very productive for Jeff to summarize the AOGA comments.

Unocal Alaska owns and operates 17 oil and gas facilities on the Kenai Peninsula. In addition, we own interest in various North Slope properties and leases throughout the state.

We submitted written comments and we have also participated in developing the more detailed comments that were submitted from AOGA and which were summarized for you by Jeff. We support those comments and we believe that the proposed regulation packages if fatally flawed.

The revised package is intended to provide clarity of scope and applicability and predictability. It does not. Unocal has been directly affected by weaknesses in the existing regulations, which are compounded in the latest revision. We are currently permitting a natural gas exploration and development project, which is entirely on federal lands in Alaska. Subsurface resources for the project are owned by Alaska Native corporations and the federal government. And while the federal law clearly excludes federal lands from the coastal zones, and therefore from coastal zone review unless there's direct and significant impact to the coastal zone outside of the federal lands, confusion regarding the applicability of ACMP continues to cause delays and uncertainties for our project.

Language proposed for revision of these regulations makes applicability and scope even more confusing and unpredictable. For example, use of words like "may affect," which is in the latest amendment, are ambiguous and an invitation for litigation. Further, the package is intended to clarify, "everybody roles." It does not.

We appreciate the opportunities that have been provided to us to participate and contribute to the efforts to revise these regulations. Unfortunately, critical issues, such as the application of illegal homeless stipulations and the lack of scheduled discipline have not been resolved. It's becoming increasingly obvious to us that unless the State of Alaska is able to provide clear and efficient implementation of the ACMP it is impossible for us to reasonably predict the timing and

risks associated with capital investments in the state. We urge you to refocus your efforts to develop regulations that are consistent with federal law and create a clear and predictable review process.

We sympathize and appreciate that staff have spent countless hours over the last three years working on this revision. However, we do not believe it is feasible to resolve the many remaining, serious problems with this proposal in a matter of two weeks. And, in fact, we do not believe that a quality product can be produced without a process in which stakeholders who have real life experience in struggling through the existing coastal zone review and permitting process can participate.

These regulations have critical impacts on issues of concern to the state. It is far more important to both permittees and to the citizens of Alaska to develop a quality product, than it is to meet an artificial deadline. Unocal Alaska is committed to working with the governor's office and the DGC, along with AOGA members and other stakeholders, to create a regulatory climate in Alaska that both protects our coastal resources and enables responsible development in the state. Thank you.

At the conclusion of Ms. Sullivan's testimony, **Chair Galvin** opened the floor to questions.

MS. BIRD: If you don't see the two weeks that we're trying to set aside to work on this and resolve some of these issues and so on as being possible, what process would you see? Given the lengthy public testimony that's been given in the past, and the meetings and the schedule that they've done, what more could be done that would allow you the opportunity that you've indicated you want?

MS. SULLIVAN: I think we need to sit down with a group of stakeholders with the DGC and work through it together. And I think that's just going to take more than two weeks to do, because there are too many problems still with the proposal.

No further questions were raised to Ms. Sullivan.

<u>Ken Donnakowski, Manager for Permitting, Phillips Alaska</u>

MR. DONNAKOWSKI: Just a few philosophical framework kinds of points I'd like to make. Certainly, Phillips, as a member of AOGA, endorses the comments that you heard from Jeff. So, I'd like to just give you a framework to think about as you consider this aspect of your responsibilities. Three aspects; one is the importance of what you're doing right now and about to embark on. Secondly, I'd like to make a reference as homeless stipulations as just one example of where work continues to need to be done with the regs. And then lastly, I'd like to use Randy's eloquent articulation as dealing with these regs as an analogy for what industry faces in the ACMP process.

So first off, the importance of what you are doing. The decision that you make on the regs isn't just a single project, but it impacts all future projects. So the magnitude of what you're about to do is that significant. I don't envy you for having to deal with all the nuance languages, the legalese that has to be dealt with. But it is that important. And the references to intent and semantics unfortunately lends itself again to you're losing your authority and investing it instead in the courts. Phillips saw that last year as well with the petition process. It was nobody's intent that the petition process be a tool for delaying projects. Nonetheless, despite that intent, that's how it was used. And I'd ask you to take very seriously the points that AOGO is making because it will preclude your being wrapped up in needless exercises such as you were involved in in the petition process, as well

as having to deal with issues that come from the courts and then having to be worked out in the legislature, all of which is out of this important council's hands.

So, secondly, the homeless stips. Let me just say that Chip's reference to being in a box is our view of providing predictability to the process. If the door is wide open for interpretation on the part of the agencies and commenting parties, that's where the lack of predictability comes in for industry. That's just the trade off. The other thing about homeless stips, when we have them, and Chip certainly gave some very good examples where you say, gee, that makes a lot of sense, except it relies upon the benevolent dictator philosophy. So, if I don't have Chip to deal with and that authority is still vested in the agency, as the applicant I may not have someone who is as reasonable to deal with. And the way the regs are written it vests that authority in whoever happens to be there, and whatever philosophy they want to bring to the table. That's all I'll say on homeless stips.

Lastly, as I said, Randy did an excellent job of articulating the struggle that he has had with this development of the regs, and the fact that he's not even at an endpoint yet. And he still has the council to review what the final product is, then it goes to the Department of Law, then it goes to NOAH, then it comes back to the CPC. What I'd ask you to think about though is the applicants in this process currently, and I propose to you under the revised regs that you're considering right now, has not only an uncertainty about where the endpoint is, multiple parties that will comment and have input into this process, there also the fact that we have millions of dollars at stake in these projects. Not just our time and effort, but significant capital dollars that's important to the state.

So, the last thing I want to leave you with is those three principles, if you apply them in a way that says not what do various parties want the ACMP process to be, but what it is supposed to be as defined by legislation and federal regulation. Let's not have a lot of homeless kinds of regulations that create rather the unpredictability, but let's get inside the box so that we have a process we can understand and we can live with and lastly, that ensures that state's resources get developed responsibly, which translates into revenue as well as jobs. Thank you.

At the conclusion of Mr. Donnakowski's testimony, **Chair Galvin** opened the floor to questions. No questions were raised.

Mr. Ron Wolfe, Corporate Forester, Sealaska Corporation What was his testimony?

MR. WOLFE: I'd like to offer testimony on behalf of Sealaska Corporation today. First of all, I did submit this in writing in a letter to you, Pat. If the members wish to follow along, I invite you to do so.

Sealaska supports your decision to defer the regulations, or the action on the regulations as evidenced by your agenda today. Thank you very much. We do so on the basis of two key points. The regulations include new policy initiatives, which in our minds represent sharp departures from the letter and spirit of Alaska's coastal management legislation. And the regulations in their current form fail to take into account reasonable concerns that have been repeatedly stress by the private sector throughout the process.

In my non-job, I'm a football official. I've been certified in officiating football games for about 17 years now. And so I'm wary of the rule piling on. And I don't want to be guilty of that. So, to avoid repeating our comments in our earlier submission, I'm just going to voice our support for AOGA's comments. We do support them and appreciate Jeff going through them in detail with the Council.

In addition to that, Sealaska would like to voice two other principle concerns of ours. The first one is the regulations in this current form contain outdated language in 6 AAC 80.010, subsection (b). This language requires every state permitting agency to perform redundant consistency reviews whether authorize and use a permit, even when they're not the coordinating agency. This is an arcane reading of 6 AAC 80.010 (b), which was implicitly repealed by the subsequent enactment of AS 44.19.145 A, subsection 11, and AS 44.62.096, both of which provide that only one consistency review will be completed by the coordinating agency for each project. We think this is a plain reading of the law. We've been assured by the agencies that that's the way they read it. However, we recent had a hearing officer that upheld this aspect of 080 (b), which says now that it has not been implicitly repealed. It sets up a clear conflict between this old regulation and virtually everything your division has been trying to accomplish through this existing and proposed regulations in chapter 50.

Because of removing this conflict amounts to nothing more than a housekeeping change in the nature of the reviser's amendment, we at Sealaska simply cannot understand why our repeated pleas to remove this nagging regulatory conflict have to this point been ignored. I can also assure it was very frustrating to go through the hearing officer's process only to have this interpretation as well.

We have a second point that we'd like to raise, which the June 14th amendments purported to repeal much of the recently enacted Senate Bill 371 by providing DGC will provide a redundant consistency review whenever, one, an activity covered by a general permit seeks individual authorizations; and, two, DGC is the coordinating agency. This is contrary to every draft of the new regulations heretofore has published. This new proposal serves no legitimate purpose. It also largely destroys the value of the general permit itself since the ACMP's review is so comprehensive as to necessarily entail revisiting issues already addressed at the general permit stage.

Moreover, because the existing draft contains such sweeping definitions of authorization, it is entirely possible that even existing fully permitted activities seeking nothing more than coverage under a new federal general permit will find themselves drawn into the ACMP's process since approval to operate under this general permit may well be deemed an authorization and those authorizations may need to be obtained from both the federal permitting agency, and in most cases ADEC. In a prior letter Sealaska urged DEC to change the definition of authorization so explicitly to exclude notices of intents under general permits so to avoid this unintended result. If DGC is insistent on undermining Senate Bill 371 in this fashion, narrowing the scope of the term of authorization becomes critical.

Ms. Rutherford and **Chair Galvin** asked for more detail and clarification of Mr. Wolfe's concerns regarding 6 AAC 80.

MR. WOLFE: Let me just say that my source on this is an attorney by the name of John Tillinghast, who many of you may know, a long time Sealaska attorney. In my discussion with John on this, as I understand it 6 AAC 80 was written in the original coastal zone management act. I believe it was in 1974 is what he told me. I may have the date wrong. But it was when the philosophy of the coastal zone consistency determination was certainly different than it is today. And I believe it predates in essence the formation of the Division of Governmental Coordination.

So under that philosophy where each state agency was issuing permits, the philosophy under coastal zone management was that each agency would perform a coastal zone consistency determination. Since that time DGC has been formed, the specific language in AS 44.19.145 and the

other cite in AS 44 were developed. And through almost sloppy regulation writing or not being thorough this new approach that is established in these regulations, those being AS 44.19 and AS 44.62, is the DGC coordinated coastal zone consistency process, where for a project that requires a multitude of permits or state's actions, each agency doesn't do their own individual consistency determination. It's a DGC coordinated consistency determination.

But the language was not specifically repealed from the earlier AS 80. It's just been sort of this nagging poor language that hung on, because everyone knows that when I submit a permit application that the consistency determination is going to be done by the DGC.

Even though we've raised this issue that it needed to be cleaned up because everyone knew it, it hasn't been cleaned up. And everything was fine until we went to the hearing officer's decision of the National Resource Defense Council's action against the DEC for their certification of EPA's LTF MPDS permit. In that hearing officer's decision, the hearing officer reached exactly the wrong conclusion and said that even though under this general permit there is a statewide coordinated consistency review, he held that each agency was required to provide their own individual consistency determination. That conclusion within the first 13 pages, I believe it is, of the hearing officer's final decision in that matter on the MPDS permit.

Chair Galvin indicated that the council has attempted to deal with AAC 80 in the proposed package by being explicit that DGC's review is the only state review required. He also indicated making the suggested change to 6 AAC 80 would require a new public notice process. Chair Galvin also asked for clarification of the term "Reviser's amendment."

Mr. Bates indicated that reviser's amendments were possible through the Department of Law, if they find that changes to AAC 80 are needed in order to bring it into compliance with the proposed changes to AAC 50. Mr. Bates was unsure if those changes could be made without additional public notice.

Ms. Rutherford suggested that the CPC explicitly suggest the change to support the reviser making the change.

No further questions were raised to Mr. Wolfe.

Mr. Tom Atkinson, Executive Director, Alaska Conservation Alliance
Ms. Rebecca Bernard, Staff Attorney, Trustees for Alaska

MR. ATKINSON: I'm Tom Atkinson, director of Alaska Conservation Alliance, representing 43 member organizations across the state, with a membership of more than 30,000. And to my right is Becca Bernard, staff attorney for Trustees for Alaska.

First of all, I'd like to say that it's amazing how much we can talk about something that doesn't exist, which are homeless stipulations. But I won't go into that right now.

We thank the Coastal Policy Council for the opportunity to present testimony on the proposed revisions to 6 AAC 50. This is the third version of the proposed revisions to the Chapter 50 regulations that DGC has released for public comment, and unfortunately it's not an improvement over the first two drafts. Our criticisms of the new version and our suggestions for improvement fall under six headings. First is the scope of the consistency review is overly constrained and will not ensure consistency with the ACMP. I think of it graphically like this, if I'm

trying to CPC, but I'm looking through this little aperture, I don't see the CPC, I just see a little portion of it. And that's what you're doing with these regulations is forcing DGC or another agency that does consistency review to focus just a small portion of the overall project, thus ignoring the overall impact of the project.

The latest version of the regulations imposes too many restrictions on the scope of the consistency review for a project in a coastal zone, therefore will not ensure consistency with the ACMP. Reviews are allowed to include only those activities that require some sort of agency authorization. Indeed the requirement that activities be conducted consistent with the ACMP now applies only to activities requiring agency authorizations. Reviews are limited to evaluating consistency with enforceable policies of the ACMP, ignoring the other aspects of the ACMP that are an integral part of the program's overall effectiveness in balancing conservation on the one hand and development of coastal resources on the other hand.

Agencies are not required to include associated activities in this scope of review, and indeed may include such activities only if certain stringent conditions are met. Project is actually defined to exclude any associated activities that are excused from review. Review is extremely limited for a project modification and authorization renewals. The overall effect of these revisions is to riddle the consistency review with holes instead of to ensure that the project as a whole is evaluated for consistency with the ACMP.

Secondly, cumulative impact review is eviscerated. The latest package eviscerates the ACMP requirement that a consistency review evaluate not only the direct coastal effects of a project, but also the indirect and cumulative effects. The regulations accomplish in part by removing key definitions, such as for the term "direct" and "indirect effects" and rendering others meaningless, such as the new definition for the term "reasonably" and "foreseeable."

Third, the exceptions to consistency review are now the rule. The A and B lists of categorical approvals and general concurrences that are excused from consistency review was already overly inclusive and of questionable statutory authority. The new version of the regulations makes the list even worse by reversing the current presumption that an activity must be reviewed for consistency unless it is on the A or B list. Now, the presumption under this new proposed draft would be that an activity need not be reviewed for consistency unless it's on the C list. This change shifts the burden to the agencies to identify ahead of time every conceivable activity that could affect coastal resources. This presumption also makes consistency review of the projects in the coastal zone the exception instead of the rule. This will not ensure consistent planning and management for our coastal resources as is required by the CZMA and the ACMP.

Another problem here regarding the ABC lists is state resource agencies and DGC do not always agree on what agency permits are or should be on the C list. An agency may argue that merely changing the name of a permit means that its issuance for a project is no longer subject to consistency review, thus further narrowing the scope of the review. Turf tensions between state resource agencies and DGC ensure that updating the C list, if it's possible at all, is an excruciating and glacially slow process. Thus the scope of review should not be tied exclusively to the C list.

The fourth major point, the public is consistently disadvantaged in the consistency review process. Throughout the new rules package public participation is significantly hindered. I'll mention just a few examples. When a consistency review is initiated, the review packet is provided automatically to the applicant and to the review participants as has been historically, but to a member of the public only upon request. Extension of comment periods is available for agency and coastal district comments, but not public comments. The public is not notified of review schedule modifications as applicants and review participants are. Public notice provisions are inadequate.

Consistency review packets and schedules are not required to be made available to the public. The level of specificity demanded of public comments is too stringent, especially if the review packet is not available for inspection and the review agencies are told not to consider comments that do not meet the specificity standards.

Fifth, the enforceability of alternative measures designed to ensure ACMP consistency has been weakened. The new rules packet deletes the provisions requiring that stipulations designed to ensure project consistency be included in the relevant agency authorizations for the project. This provision should be left in place as it provides important additional enforceability for such stipulations. The provision making the project description enforceable should be strengthened by adding language to the effect that a new consistency determination is required if the project or the project description changes. In addition, the language emphasizing the agencies' enforcement discretion with respect to project descriptions, alternative measures and conditions should be deleted. It goes without saying that agencies have a certain degree of enforcement discretion and the only reason to articulate that discretion here is to inappropriately signal to the agencies that they really don't need to enforce these measures.

And lastly, the Alaska Supreme Court decision in Cook Inlet Keeper vs. State is not adequately addressed. When Governor Tony Knowles signed SB371 into law on June 7th, he promised to offer a regulatory fix that would ensure DGC's compliance with the Alaska Supreme Court decision in Cook Inlet Keeper vs. State. He promised to address this by requiring the DGC to include activities covered by general or nationwide permit within the scope of review project that required DGC coordinated review. The proposed regulations fall short of this promise. Although they require that activities authorized by the general or nationwide permits be included in the scope of the DGC project review, they ensure that review will be inadequate by limiting it to only those consistency issues related to such activities that were not considered in the general or nationwide permit review.

This proposed revision continues the theme of the entire package. The consistency review process is now so riddled with exceptions and limitations that it cannot possibly evaluate the coastal effects of a project as a whole, and therefore cannot ensure a project's consistency with the ACMP.

We have an issue also with the timeliness. Again, as others have testified, I'm not sure whether you're going to be able to address this. DGC has not given the public a 30-day review period that's required for proposed revisions to regulations. DGC publicly released the latest version of the revisions, which include substantial changes, during the first week of June, and released additional amendments on June 14th, just six days ago. DGC should accept public comment on the latest package for at least 30 days from the release date. But I understand you're working with regulations attorneys at the AG's office, so you're well advised on that point. And thanks for the opportunity to testify, and we welcome questions.

MS. BERNARD: I'm actually here primarily to help answer questions, since we worked on our testimony together. But I do want to make just two quick points. One is that we have submitted a more detailed version of the testimony that Tom just presented in the form of comments, which you also have. So, all of these concerns are laid out in considerably more detail.

And the second point is just as an overall framing, I think it's important to keep in mind, as I'm sure the council is, that the goals of this regulatory revision package go far beyond the efficiency and predictability goals that the industry representatives have been speaking about today. And really first and foremost is the goal that this process ensure that activities, projects in the coastal zone be consistent with the Alaska Coastal Management Program. And so this process first and foremost has

to find a way to ensure that, and to ensure that the goals of the ACMP of balancing conservation and development of coastal resources are met. So, I just really want to emphasize that that has to be the first and foremost goal.

So, with that, we'll just take your questions.

At the conclusion of both Mr. Atkinson's and Ms. Bernard's testimony, **Chair Galvin** opened the floor to questions.

MR. DENNERLEIN: When you say overly constrained in scope that implies that a consistency determination applies only to activities requiring agency reauthorization. There are several things you say about scope, agency authorization; you also talk about associated activities. Could you enlighten me a little bit about that? You also raise the point here saying that we can only evaluate enforceable policies. On this point, if the direction is not create new law or new permit authorities, as has been said, what would we review if we were not reviewing actual actions that required authorization from us, and what would you propose if we couldn't follow through and take any action?

MS. BERNARD: With respect to agency authorizations, my understanding of the ACMP is that any activity in the coastal zone and wherever it may have an effect on the coastal zone, must reviewed and must be conducted consistent with the Alaska Coastal Management Program. So, I guess my question back to those who are writing these regulations is how would that be excluded? That has to cover any activity that occurs in the coastal zone.

Chair Galvin stated that the program has never claimed that every activity that affects coastal uses or resources has to be found consistent with coastal management. Chair Galvin explained the network of agencies involved in the consistency review process, including local governments.

Ms. Bird asked for an example of an activity that currently doesn't have an enforceable policy or permit that might drop out of this process if the current proposed regulations were adopted.

Chair Galvin gave an example of a project in Juneau where a landowner wanted a Title 16 permit from Fish and Game to build a bridge across a stream and came in with a project description that included building the bridge and developing a mobile home park on the other side of the stream. In the course of the review the Department of Fish and Game found the project inconsistent because the motor home park would have impacts on the stream that were inconsistent with the habitat standard. They did not issue the permit for the bridge. Years later the applicant came back and asked for Title 16 to build the bridge, without mention of the mobile home park, knowing that Title 16 was not required for that activity. Chair Galvin indicated that this type of situation sparked debate on what would be considered within the scope of a project.

Ms. Bernard expanded on the concerns raised in Mr. Atkinson's testimony and the issue of balancing conservation and development of resources and ensuring careful planning. By restricting the consistency review the analysis that the agency does just on the enforceable policies, that leaves out a lot of what the ACMP is about. The agency should look at the entire program when it does a consistency review. Ms. Bernard also stated that how a project is defined shouldn't necessarily be the same thing as what is the scope of the project review.

MR. FREDRIKSSON: What diagnostic tool do you see people using to come to identify these associated activities, when in the regs we have a coastal project questionnaire that only speaks to regulated activities by requiring state permits?

Chair Galvin stated that under the particular section, the diagnostic tool of the CPQ is one aspect of it. It also requires a full project description and a full identification of the project.

MS. BERNARD: First of all, I agree in terms of the diagnostic tool. The CPQ and all the follow up work is generally provided in the CPQ and in the project description. In terms of how you define associated activities, I think the point there is that the regulations should provide some standards to the reviewing agencies as they define the scope of the project review. The standards should be guided by the general principle, which the Alaska Supreme Court recognized in a recent ruling, that the basic principle is that the consistency review has to look at the whole project unless there are explicit exceptions to that that can be carved out. The principle of the ACMP is that the whole project has to be analyzed.

Chair Galvin asked if there were additional questions for either Mr. Atkinson or Ms. Bernard. Mr. Dennerlein indicated that he had further questions. Discussion of Mr. Atkinson's and Ms. Bernard's testimony was continued to Friday morning.

Mr. Brownfield MOVED to recess the meeting for the day.

The meeting was recessed at approximately 5:00 o'clock p.m. and scheduled to reconvene at 8:30 a.m. Friday, June 21, 2002.

MINUTES
ALASKA COASTAL POLICY COUNCIL
Thursday June 20 through Friday June 21, 2002
Marriott Hotel, Anchorage Room
Anchorage, Alaska

Day 2 – June 21, 2002

Call to Order/Roll Call

Chair Galvin called the meeting to order at 8:30 a.m. on June 21, 2002. A quorum was present to conduct business.

Present

Charlotte Brower
Robert Fagerstrom
Alice J. Ruby
Robin Heinrichs
Jack Cushing
Nancy Bird
Patrick Galvin
Pat Poland
Marty Rutherford
Boyd Brownfield

F. Action on Proposed Revisions to 6AAC 50 Regulations (continued)

Mr. Tom Atkinson, Executive Director, Alaska Conservation Alliance
Ms. Rebecca Bernard, Staff Attorney, Trustees for Alaska

Chair Galvin reopened the floor for questions for Mr. Atkinson and Ms. Bernard. Ms. Bernard commented on the question and answer process, and limited amount of time available to get too in-depth.

Mr. Dennerlein being absent, the council determined to move forward and continue Mr. Atkinson and Ms. Bernard's question and answer session to later in the morning.

Ms. Fran Roche, ACMP Coordinator, Department of Environmental Conservation

Ms. Roche introduced an amendment to 6 AAC 50 920, the emergency expedited review and waiver section. Subsection D would allow DEC to act within statutory authority to respond to spills in the coastal zone under the current state unified plan and the incident command structure. Ms. Roche, on behalf of DEC, requested that the DGC add the amendment so that spill events can be controlled and cleaned up in the coastal zone when they pose an imminent threat to the public health and environment.

Chair Galvin opened the floor to questions for Ms. Roche. No questions were raised.

Ms. Janet Burleson Baxter, Coastal Management Coordinator, Department of Natural Resources

Ms. Burleson Baxter introduced an amendment to remove the term "condition," which is found at 6 AAC 50 255(b), and then a definition at 6 AAC 50 990(a)12 and any conforming changes to those. This wording is a leftover from a prior draft. Also, DNR feels that the term "condition" in conjunction with the term "alternative measures" in this packet can be confusing and would also potentially subject conditions under DNR statutory regulatory provisions to the ACMP elevation process.

Chair Galvin opened the floor to questions for Ms. Burleson Baxter.

Ms. Rutherford suggested that as the council looks through the other public comments over the next two weeks that the recommendations from the agencies should be factored in.

No further questions were raised.

Discussion ensued regarding changing the order of the agenda items and to resume the public comments later in the morning.

Resolution 2002-2: Honoring the Services of Boyd Brownfield.
Mr. Bates read into the record as follows:

"Whereas Boyd Brownfield has served on the Alaska Coastal Policy Council since January 31, 1995;

Whereas, Mr. Brownfield's commitment and efforts have resulted in great strides forward for the ACMP;

Whereas Mr. Brownfield has worked on numerous controversial coastal management issues, including the ACMP Assessment, 6 AAC 85 and 50 regulations, and petitions in a capable and level-headed manner;

Whereas Mr. Brownfield's commitment to sound resource management and public service is commendable to all of us on the Council;

Now, therefore, be it resolved that in recognition of Mr. Brownfield's uncompromising service, the Alaska Coastal Policy Council hereby commends Mr. Brownfield for his devotion to the objectives of coastal zone management and policy development in Alaska, and offers its best wishes to him in all future endeavors.

Signed by Robbie Fagerstrom, Co-Chair, and Patrick Galvin, Co-Chair."

Ms. Rutherford MOVED for approval of Resolution 2002-2. Mr. Cushing SECONDED the motion. The motion was unanimously approved.

Mr. Kurt Fredriksson arrived and **Chair Galvin** noted his arrival and attendance for the record. **Chair Galvin** noted that Mr. Dennerlein had not yet arrived. It was decided to finish up Item E,

part 4, listed on the Agenda as FY '03 309 Projects Update, which had been continued from the previous day.

4. FY '03 Project Updates

Ms. Hunt presented a brief update on the Section 309 Enhancement Grants Program. The program provides funding for coastal states to work on enhancements or improvements to their programs. DGC has been working with a Coastal Policy Council subcommittee over the past five years to solicit, review and select enhancement grant projects.

This year the Coastal Policy Council subcommittee includes Pat Galvin, Pat Poland, Robbie Fagerstrom, Kurt Fredriksson and Jack Cushing. The subcommittee has selected five projects beginning this July. The first project, the Lower Kenai Peninsula Wetlands Project, is a Fish and Game effort to work with watershed groups and other agencies in the Lower Kenai Peninsula to address off-road vehicle impacts to wetlands and rivers.

The second project is for aerial mapping and village policies for Barrow and Point Lay (ph) to address coastal wetlands and erosion. Concurrently, the North Slope Borough is revising its coastal management program. This effort would help these villages develop specific, enforceable policies to address wetlands and coastal erosion, which are particular problems for Barrow and Point Lay.

The ACMP Information Technology Package is an effort by the DGC to present legacy ACMP information and current ACMP information about project reviews, coastal district planning, other issues and research that has been conducted for the Enhancement Grants Program, for example; to develop a database and to have all this information available and searchable on the Internet. This is the third year of this effort.

The fourth project is marine protected areas in Alaska. This is an effort for the state resource agencies, coastal districts and other stakeholders in Alaska to work together to develop criteria that all agree on to identify and select marine protected areas in Alaska.

The ACMP Model Plan is a project that would develop a model plan in the Bering Straits Coastal Resource Service area. This project is a culmination of several years of working on model enforceable policies for coastal districts, integrating local knowledge into coastal district programs, strengthening the programs in general.

Chair Galvin opened the floor for questions regarding the 309 projects.

Ms. Rutherford asked who was heading up the marine protected areas project. **Ms. Hunt** indicated Randy Bates would be heading up that project.

Mr. Cushing inquired regarding the number of applicants, and had everyone who applied received funding. **Ms. Hunt** responded that that was pretty much the case, indicating that this was an unusual year due to coinciding deadlines. 309 Project Grant Applications were due at approximately the same time as applications for Coastal Impact Assistance Program grants and there was considerably more funding available through CIAP.

Ms. Brewer inquired as to whether the grantees (or those who had applied under the CIAP and Enhancement Grants) would have been considered for funding had they gone through that route rather than the CIAP. **Ms. Hunt** responded that if the applicants had met the program criteria then that would be a possibility.

Chair Gavin further explained the Section 309 Enhancement Grants Program, grant requirements, applications and grant funds.

Ms. Alice Ruby inquired as to which staff person would be working on the ACMP model plan. **Ms. Hunt** responded that Sylvia Kreel would be the designated staff person. Ms. Kreel joined DGC staff last year and was formerly a planner with the City and Borough of Juneau and ACMP working group representative.

Ms. Ruby inquired, when the model plan project was developed, was there consideration of SB308 or was that work included in the project? **Ms. Hunt** responded that when the proposal was written that legislation had not been anticipated.

No further questions were raised and the agenda item completed.

Mr. Dennerlein arrived and **Chair Galvin** noted his arrival and attendance for the record. It was then decided to return the public testimony portion of the agenda, specifically the question/answer portion of Ms. Bernard's and Mr. Atkinson's testimony.

Mr. Tom Atkinson, Executive Director, Alaska Conservation Alliance
Ms. Rebecca Bernard, Staff Attorney, Trustees for Alaska

Chair Galvin reopened the floor for questions for Mr. Atkinson and Ms. Bernard.

Mr. Dennerlein inquired as to why a revision would affect parts of the project that weren't affected by the modification? The question goes to third paragraph, page 2, of the written testimony submitted. Ms. Bernard responded that once there's a trigger that initiates a consistency review, it's important to look at the project as a whole. Likewise, if there's a modification to a project, that changes the whole project.

Mr. Dennerlein inquired as to page 3, regarding the public being consistently disadvantaged. A discussion ensued regarding the pros and cons of using the Internet versus mail for informing the public, as well as other methods to increase awareness and outreach of projects.

Mr. Dennerlein next inquired as to page 4, regarding restricting the petition process to citizens of the coastal district. **Chair Galvin** responded to the inquiry and discusses the definition of the term "citizen" and whether that should include organizations as well as individuals.

Mr. Dennerlein commented in regard to point 5, the enforceability of alternative measures has been weakened. **Ms. Bernard** responded that the comment made was not so much that making the project description a binding and enforceable contract. The comment was really directed to

the requirement that alternative measures be housed in the appropriate agency authorization. Ms. Bernard made the point that the alternative measures need to be enforceable. The measure needs to be a legal one that will work and that the agencies will enforce.

No further questions were raised.

Ms. Karen Wuestenfeld, Permitting Team Leader, BP Exploration

MS. WUESTENFELD: First, I really want to express appreciation for all the work that's gone into this long process, and the good faith effort to try to resolve issues that are really major issues of state concern and effect everybody. Yesterday, Jeff Leppo presented testimony on behalf of the Alaska Oil and Gas Association. And as one of AOGA's member companies, BP fully endorses AOGA's comments and recommendations he made in testimony. There's two things I heard yesterday that I want to echo. As you recall, Jeff urged that choices be made so that the regulations are clear and predictable. Jeff then went on to illustrate why we feel clarity is so important, and then what our concerns are with the current wording in the draft.

You also heard yesterday and this morning testimony from the Alaska Conservation Alliance, and interestingly both of our testimonies are addressing some of the same issues. Probably different points of view, but we're honing in on the same sections. I think that really points out why it's so important to have very clear, direct language that reflects whatever choices you make.

I'd also like to echo something that Ken Donnakowski said. These regulations are very, very important, and it's critical that we get procedures that are unambiguous as possible. These are procedural rules that we follow, and everybody needs to know what the rules of the process are. When you think about it that way I think it's pretty simple.

Anyone, whether it's a company like ours - and I thought about the combined experience that me and my staff have, over 50 years of professional experience dealing with these things. Other companies or small business, villages, cities, may not have that resource. And they probably just as much or more need very clear rules to understand what this is all about. That's why when Ken said we need to go beyond the intent of the room today, we need to be able to pick up 5, 10 years from now and read and understand what we're doing.

I also want to reiterate some of the major comments made by AOGA yesterday. And again, this is about the rules. We need to know clearly if our project's subject to review or not. This is kind of an ambiguous approach that we've had in the past, and maybe in these current regulations makes it very difficult to predict where we're going with our projects. We need to know about how long it's going to take for a project to be reviewed. I think it's naive to come up with a flow chart that says we're going to be done in 50 days. I think we all know better. But I'd like to have a little narrower range predictability than I think we have now, particularly with a complex and unusual project.

And lastly, we the applicants need to be responsible for making our project consistent with enforceable policies. It's our responsibility to do that under the program. And all three of these concerns kind of relate back to predictability and timeliness. About homeless stipulations, I urge you to read carefully and think about AOGA's proposal. Remember that when I, as a permit agent for my company, sign a CPQ, I'm certifying - this is a quote from CPQ - the proposed activity complies with and will be conducted in a manner consistent with ACMP. To make that certification I need to know what it is I'm certifying against. Again, that's why we need very clear guidance on what scope and enforceable policies and how it relates back to the project review.

If reviewers then look at our project and find it's inconsistent with one of the enforceable policies, I think it benefits everybody to get a very clear and detailed description back in writing of what is wrong with the project with regard to an enforceable policy. And I would personally welcome some input or guidance on how we can go back to the drawing board, maybe use your suggestion, maybe think of something different, maybe come up with a combination of the two, and then come back and test that again against the policies. That's the basic model I think Jeff Leppo was discussing yesterday.

Another think I think is very important to think about is these issues aren't just an oil and gas issue. They're not just a private sector issue. Before I worked oil and gas, I was a consultant and I actually permitted a lot of municipal projects; landfills, waterlines, parks. And some of those projects got embroiled in a lot of the same issues I now see in oil and gas. So, it's across the board, it's not just industry. And if you think about it from a policy perspective, when you're spending the public's money, as well as us spending our private capital, it really is important that we know what the scope is, how long it's going to take, what the process is in a very clear and concise way.

You've heard us say, and others, that the current draft regulations need some more work before they can provide a framework for predictable permitting, and answer basic questions about scope, timing and process. Some of these language changes could be really simple to draft, and others may not. And I think you have to get into it and look for all the interconnections. So, I really hope in two weeks we can come back and find ourselves there. But if not, I'd like to urge the council to take the time required to get it right, not just for industry, but for the state because this is an issue for state concern. In either case, as a stakeholder and somebody who works permits on a day-to-day basis, I'm very willing to continue working with you.

At the conclusion of Ms. Wuestenfeld's testimony, **Chair Galvin** opened the floor to questions.

Mr. Dennerlein commented on Ms. Wuestenfeld's testimony regarding time, and narrowing the uncertainty, and inquired if she had ideas in mind that might narrow the sideboards a little bit?

MS. WUESTENFELD: Two specific areas come to mind. One is really good discipline on requests for additional information. And those requests should be tied to what a reviewer needs to see if the proposal's consistent with enforceable policies. And then any kind of second bites of the apple should then hark back to the original question and again the enforceable policies. And I think the language is getting pretty close to providing that. I'd like to take a little more time personally, because this is has been just three-week period, and think about it. The second one is unusually complex project. In my experience there are things that seemed very simple and clear kind of fall into that bucket for some reason that I couldn't have predicted at the beginning. Other ones that you think could get into that loop go past it. And I don't know what unusually complex means when I read the regulations. And I think it would benefit all of us to either clearly define what that threshold is or eliminate it.

MS. RUTHERFORD: I was looking through the proposed amendments that are attached to the most recent AOGA comments. The issue on the complex projects, was that in the previous AOGA comments? Was there specific language linked to that in the previous comments?

MS. WUESTENFELD: I don't recall.

MS. BROWER: My comment is one for Kathy and one for Pat or the members here. You stated earlier that when a petition that's being under review by the state, you've gone through that process with the North Slope Borough, or with maybe Northwest Arctic Borough, and have gone through their planning commission review. And during that process you've gone through all your public process, etc. And then they approved your permit then it goes into the state on your petition so that you could get a petition from the state to go ahead and do what you have to do in their respective districts. What happens when either of the two boroughs had denied your process, and it has been denied by the assembly, do you still go to the state or do you have to go through a judicial system to appeal the process?

MS. WUESTENFELD: I think there's two answers, or two pieces of an answer there. First of all, any disapproval basically stops the project. So going to the state to deal with it doesn't help. That piece of the project or that whole project, whatever it is, is disallowed and we need to either abandon that or reconfigure it somehow and ask for reconsideration. The other thing though is practice. When we submit a permit application packet, we apply to the local government almost all the time at the same time as we do to the state and federal agencies so everybody sees everything at the same time. There are some exceptions. We keep local government informed though. So we try to keep everybody, as much we can given the varied schedules and timelines, along the same path and the same degree of information.

MS. BROWER: The other concern that I have, and it goes into enforceable policies and what limitations each governing bodies in respective districts would have. Currently, as I know it, the North Slope Borough is in the process of revision. They have the resources to do that. But the Northwest Arctic Borough, as I understand it in my conversation with some of the public members from my district has one but now because of the changes that they cannot use either the federal regulation or state regulation, and not having the resource to correct what was already in place. What support does the state give to the boroughs or other places that need to get this process going? What kind of support are they going to be receiving from the state? Do they have to go through a grant process, or do they have to use their own local resources so that they can correct a problem that they're going to be facing?

Chair Galvin explained that annually there is about $150,000 to $200,000 in special projects money that is available to the district each year on a competitive grant basis for program changes so they can do their updates.

No further questions were raised.

Ms. Brower then asked what limitations each governing body and respective districts would have; also what support does the state give to correct problems faced locally? Chair Galvin addressed the topic of funding available for program changes and revisions.

No other questions were raised.

<u>Ms. Karol Kolehmainen, Aleutians West Coastal Resource Service Area</u>

MS. KOLEHMAINEN: I'm going to speak somewhat generally because that's just kind of how I usually speak, I guess. I'm not a lawyer. And part of a coastal district, especially a CRSA I think, is that we tend to be involved in many things and possibly not a master of very many of them.

The most important items to me though that I've heard discussed, of course, is the scope of the project. And we're one of the people that provided comments on including in the scope the types of things that would only be covered by enforceable policies. And that's important as a CRSA because we are in that loop where we can't quote state regs in our plan. And so we do have to create our own particular areas of interest or attention that we think are important to the local people. And that's probably the strength of our program. Then we have to rely on state agencies and the resource agencies to include those and to make them happen and to make them enforceable. And that's how the program's designed. When the plan gets signed in and it's approved by the Lt. Governor, then that comes with that charter to include those enforceable policies. They have to be included and they have to be given to the agency with the closest degree of responsibility to make that happen. That's how I understand it.

So, anyway, I don't think they're homeless and I don't know why we keep using that word. And now I'm confused because I thought that was what I just talked about. Now I guess I'm understanding that that is what's called an alternative measure. So now I'm going to talk a little bit to that part.

I also express concern about, as I heard AOGA said, shifting the burden to the reviewer. When I read some of these changes initially, and I don't have a problem with identifying policy, I don't have a problem with saying that to be consistent it would have to meet our parameters of this policy. But I'm not an expert in identifying what needs to be done exactly to make that happen. I've expressed that before. So, I kind of look at it again in a simple way, always relating to my own household, I suppose, where I'm the authority of the house and if somebody comes to me with an idea, a child or a person that needs to do something, I don't have to sit down and prove to them what they need to do to make that better. They know the rules and they come to me, and they say, well, this is what we're going to do, this is what we'd like to do. And I say, well, that sounds pretty good, but I don't think your quite at this point yet. And then, okay, well then we can do this. I don't have to sit down for three days and come back to them with a plan on how they're going to do it right. It doesn't mean I'm not going to talk to them about doing it right, it just means that it would be difficult for us to come up - the coastal districts, especially ones without a Title 29 - to come up with specific measures. Performance standard, perhaps. But specific measures, I don't know.

So, those are kind of my big comments. I also think, as I expressed in my earlier comments, that it is important to keep the coastal district involved at every point. I think the most critical points are in the pre-application areas where we can make some good bang for the bucks with the developer and the agencies at the table. And I also think it's important when we get to those points in the review where the local interest is especially keen, such as a mitigation, when we get involved in those kinds of discussion, I think it's important. Certainly the resource agencies have the expertise, but the local area has the interest and the knowledge, and it's their home. So I think that is really important to keep the coastal district involved.

Anyway, that being said, the simplest thing I have to say is about the public noticing. Given the current administration I don't have a problem with the changes. But some of my communities aren't very much on the Internet. They're just not. We could certainly probably get to maybe a part-time city manager or someone like that through the Internet. But generally they probably won't live in that community. So, when we look at that not putting it in the newspaper, putting it on the Internet, in one place, I'm not sure that that's going to get to the people that it needs to get to. In a

community like Unalaska, there are folks that don't even go to City Hall. I think that we have to be careful that we get the word out, whatever that takes.

I thought instead of starting first with all the good things that I have to say about the process, I would end with that. So, I do want to say thank you for involving us. Should this go into a stakeholder kind of situation or whatever we decide to do, I would suggest that the stakeholder group be one industry representative, one coastal district, one conservation person, and an administrator. I think that that would provide equal representation for everybody. I sat in the DEC stakeholder workgroup, and I was the sole coastal district. I always hear the conservation folks say they're the sole conservation people. Anyway, that's just a thought. But I do appreciate it and I think it's a good thing. I work with the program every day, and I don't think it's bad. I think it could be easily resuscitated, and it would not require a brain surgeon, which is what we were before we were rocket scientists.

At the conclusion of Ms. Kolehmainen's testimony, **Chair Galvin** opened the floor to questions. No questions were raised.

Mr. Kevin Callahan, Seariver Maritime.

MR. CALLAHAN: Seariver Maritime, as you know, transports Alaska North Slope crude oil to the port of Valdez, and its tanker vessel contingency plans are subject to review by DEC under its own regulations under the ACMP. Seariver has commented twice previously in writing on the proposed regulations, and again yesterday. I'll try to not repeat all the things we said in writing, but focus on a couple areas of concern here this morning.

Let me first say that we appreciate all the hard work of DGC in revising these regulations and coming up with new proposed language. We also appreciate this council's careful attention to this matter. We think these regulations are very important and they deserve this council's careful consideration. The last regulations have been in effect for 18 years. Putting in a new revision to these is a very major undertaking. Once it's done it will likely be in effect for a long time, perhaps much longer than any of us are around to deal with it.

Let me say also that Seariver concurs with and joins in AOGA's comments. We believe serious concerns remain about the scope and applicability of the program, about homeless stipulations and about the lack of enforceable scheduled discipline. And for that reason, we believe the regulations do need more work.

I would like to first highlight one area that some folks have talked about, and that is an importance of language in these regulations. And I do think it's something that is very important for this council to focus on. We have right now before us a lot of new language, and it's very important that it be clear. Clear both in terms of intent, what it's intending to express, and the language that will capture it. Why? Because these are regulations and once they're in effect they will take on a life of their own. They will mean what they say on the printed page, not what you or I or any of us perhaps said here today. They will be subject to interpretation by many people who weren't here, who won't have been through this process, who may not know what DGC's intent was or the permit practice is. And so it's important the regulations capture exactly what is intended and not merely be a vehicle that will perhaps serve current practice or serve what the best intentions of the parties are. It has to be captured on the printed page or it will not work.

Again, the regulations will stand on their own. The last regulations have been in effect for 18 years. I think it's also important to remember that these regulations will be subject to

interpretation, not merely by applicants and DGC reviewers and folks in this room, but by the courts. And I think we've seen the courts come along and give some interpretations to this program that are contrary to DGC's own view of it. And we've also seen litigation over the meaning of the ACMP. So, I just think it is very important, whatever choices this council makes, that we capture those choices in language and that they be clearly expressed.

With respect to another area I would like to briefly highlight, the scope and applicability of the program, and we've heard some comments suggesting that the program really ought to be given a very broad and perhaps indefinite scope. I am a lawyer. Where I start with when I think about these things is what the statutes say and what the legislature intended. And I think, my view at least, there is no question the statutes and the legislature intended the ACMP to be a program with defined, identified uses and activities, within defined coastal boundaries. In other words, identification of what is going to be subject to the program in advance so that it is predictable, so that it all concerned do know what is going to be subject to review.

The ACMP, I don't believe, was intended to be a catchall to include everything in the coastal zone, or to include the coastal zone as everything. And it certainly was not intended to be a process where there could be ad hoc review of indefinite regulations to have to determine on a case-by-case basis what should be subject to review and what shouldn't be. And I think it is possible for this council and regulations to identify in advance the boundaries of the program and the uses and activities that are subject to it. And it is also possible to add further uses and activities. For example, we've heard discussions of the famous trailer court analogy. Let me just say that if it turned out that there was a plague or problem with trailer courts across Alaska and that those could not be dealt with under existing laws and local regulations, and if they were having a direct and significant impact on the coastal zones, then this council could consider that as an identified activity and perhaps take an appropriate action. But we ought not to have is to try, through some very broad indefinite definitions, to account for things that haven't arisen or that nobody can identify now.

If we do not do that, and we do not have definiteness and predictability, then what we will have is a situation which the scope of the program and the applicability of the program must be decided on a case-by-case basis. It won't be predictable to an applicant. It can be applied differently by different reviewers, and different districts, and different agencies. It will create litigation because there will be challenges to many case-by-case determinations made. And ultimately the courts will be attempting to decide what should be subject to the program and what should not. So, we believe that's contrary to the intent of the program and the statutes, and it really doesn't any interest.

With respect to homeless stipulations, I'd like to make one brief comment. Again, perhaps this is a legal comment. I think the answer to the homeless stipulations has been, in fact, already provided by the legislature. When the ACMP was established, the legislature first said - and this is in the legislative policy findings with the act - that it was intended to use, rely upon, existing authorities to the greatest extent possible. It was not intended to create a new coastal permit with new coastal conditions. It was intended to use existing local and state government authority to the greatest extent possible. And I think the legislature probably contemplated that existing state permitting authority would be sufficient to carry out the program and to execute it. But in the event that it wasn't there is a statute, and it's AS 46.40.210, where the legislature said that after the inception of the program state agencies were to review their own authorities to make sure that they could in fact carry out the ACMP. And if they couldn't then they could either revise their regulations or they could go back to the legislature and ask for more authority.

Now, I appreciate that doing either of those things is a major undertaking. But as a legal answer, I think that's the correct answer. If there is an absence of existing authority under state

regulations to deal with an identified problem, then the answer is, I believe, to change the agency regulations. When you do that, then you have an agency acting in its own authority, you have it acting according to its own standards, which is adopted and put in regulations, and you have it acting within its area of expertise - in other words, within the law. If you don't do that, you're risking having alternative measures or homeless stipulations adopted on a freelance or ad hoc basis, without any agency standards to measure them against and without fitting into any set of regulations or established law. And it may not be a convenient answer, but in my view that's the legal answer.

At the same time I believe that existing agency authority is considerable. And it ought to be a very unusual situation in which there should be a need for alternative measures which cannot be addressed through agency authority. And if there is, and certainly there could be a role for those, it ought to be regarded as something unusual, and there ought be some significant justification for them.

I have a couple of matters specific to Seariver I'd like to just touch on very briefly. One of the concerns we have about indefinite boundaries and scope is the extraterritorial reach of district programs. In the case of Seariver's contingency plans, that's a result of a potential review of the plans by multiple districts where their jurisdiction isn't clear or overlaps. And we don't think that's what the legislature intended. Unfortunately, it appears that these regulations as they stand would codify that extraterritorial reach, and we simply don't think that's appropriate.

We have a specific concern also about one measure. It's the inclusion of regional citizens' advisory councils as review participants with respect to contingency plans. We address this in writing. Let me just say here that it's not a criticism of any RCAC to say that we believe this is not their legitimate role. We believe they were intended to be independent organizations and can legitimately function there. But there not ACMP experts, and they're not a district and they're not a resource agency. They ought not be involved formally in an ACMP review. So we urge the council to delete that provision.

At the conclusion of Mr. Callahan's testimony, **Chair Galvin** opened the floor to questions.

MS. RUTHERFORD: Could you identify where the codification of the extraterritorial reach is for me, just so I can take a look at that?

MR. CALLAHAN: Yes. It's in O55, and it's the notion that a potentially affected district can, on a case-by-case basis, come in and be a program reviewer. In my view, the provision ought to provide that a potentially affected district can participate in a consistency review, but it's important in policies its jurisdiction ought not to be binding outside its territory.

MS. RUTHERFORD: Given the fact that you're concerned about using what some people refer to as homeless stips and alternative measures, you think we need to be confined to what is within the parameters of the agencies authorities; how then do you think that the coastal resource service areas are supposed to imbed into their district plans anything that is legitimately of their local concern? And what is the device for implementing that, if in fact they cannot just reiterate what are the agencies authorities which now has been clarified in law? So what is their role, what is the device by which you look at their local concerns and implement those?

MR. CALLAHAN: I think it's either state authority. State agencies I believe are charged with implementing the program as to CSRAs and it is the consistency determination.

MS. RUTHERFORD: If their enforceable policies can't simply be a restatement of the law or the regulations, and they have local concerns that may drive them towards focusing something beyond what is imbedded in the state standard, how do we implement that?

MR. CALLAHAN: I'm not an expert on CSRAs, and I've not personally dealt with these situations. So let me caution that I don't want to get off on a hypothetical which I haven't really considered. But I think the statutes certainly charge the state agencies with responsibility to do that. Again, if there's a question of authority, they could revise regulations to perhaps implement specific concerns. But I think the consistency determination is, again, the ultimate consideration. I do think there may certainly be room for voluntary measures, if those are necessary to make a project consistent, and an applicant ought to consider them. But I also think we need to be very careful about how we capture those in regulations, and they ought to be truly voluntary. But I think the consistency determination is the authority that agencies have if a project does not take into account enforceable policies which it needs to, properly adopted enforceable policies in a CSRA, and that renders it inconsistent then it's inconsistent.

MS. RUTHERFORD: So then you'd suggest that we just simply find it inconsistent until the applicant determines some vehicle for imbedding in their project addressing the enforceable policy of the particular CRSA district?

MR. CALLAHAN: Yes. I think the applicant already has a burden of making the project consistent, and coming up with a project that is consistent.

MR. DENNERLEIN: What I'd like to really understand from these comments is, help me make this connections: the ACMP is legal, and it contains enforceable policies, I assume that you would agree that the process - by that I mean the regulations, information requests, alternative measures - should be tied to the enforceable policies of the ACMP?

MR. CALLAHAN: Yes.

MR. DENNERLEIN: What happens if individual agencies have broad statutory authority and intent from the legislature to protect the resources? (Gives example from Fish and Game authority). I guess my question is, if we have a legal ACMP and we have these enforceable policies and I don't specifically have a reg and we tie everything to enforceable policies, you wouldn't suggest that we just stop all projects until we do a big review and revise Fish and Games regulations? Do we either work out alternative measures, or do we just tell everybody in the state, don't do anything for a while in the coastal zone until we do some global review of state agency regulations?

MR. CALLAHAN: I guess my view, and again I look at this as a lawyer, is first of all I view homeless stipulations as stipulations which really are outside an agency authority. There may be gray area. It may well be that Fish and Game has authority under broad statutes or the existing regulations to impose some provision, in which case that is a legitimate exercise of authority. But I think the long term answer can't be, ought not to be for the ACMP to impose conditions which are not within any particular agency's authority and which no agency really has the authority to enforce. And I'm not suggesting that we bring the program to a halt. And I do believe that certainly the

applicant has the ability as a voluntary matter to try to tailor a project or an activity so that it is consistent. But I don't think in the long run it's a tenable answer to go forward with homeless stipulations which really are outside existing regulatory authority. And as a lawyer I really view it as a question of government of specific and identified powers acting through specific regulations, which again therefore you can predict, you can understand, you can see what the standards are and how they will be carried out versus a danger that if you're acting outside a specific authority or specific regulation there isn't any check or balance.

MR. FREDRIKSSON: Do you believe that a district, at a district level, could look at trailer courts and say, regardless of the statewide issue, at least in our district trailer courts are an issue, and we want to develop policies specific to trailer courts in our district under the ACMP?

MR. CALLAHAN: Yes, provided that, of course, a district has properly done so and the council has properly approved it. Now there are some considerations there that we've talked about in the past. I don't think they've come up with respect to a trailer court. One that concerned us is uses of statewide concern, which are matters which by definition under the federal and state acts are of greater than local interest. And those are required to be given special consideration before a district can regulate. I doubt if a trailer court would rise to that level. But, yes, I think it could be dealt with on a local level, and for that matter certainly in districts which have, summoning another authority, might not even be an ACMP issue at all. They could deal with that with their local assembly.

MR. FREDRIKSSON: At least you recognize that legislature envisioned districts addressing local issues beyond what the state might directly regulate, and use the ACMP as a vehicle to have the state recognize the importance of that issue within their district boundaries and use coastal management as the tool, with recognizing the procedural caveats and the uses of state concern that might prevent them from running amuck.

MR. CALLAHAN: Not only recognized but the legislature required that both the council and local districts specifically identify uses and activities which they were going to regulate and the areas in which they'd be regulated. And that's my point that these things should be specifically identified in advance so we don't all have to guess when something comes in, is the trailer court part of it or not? Ought this to be a reviewable activity? We ought not have to guess.

MR. FREDRIKSSON: Right. So the predictability then would be not leaving the associated activities up to the imagination of people at the time, but listing that in a straightforward manner, either in the standards or in a district program?

MR. CALLAHAN: That's exactly right. And the best example is probably the C list. It's an example of this council having said these are the things that we think ought to be reviewable. I think that's a positive way to do it. Instead of having an indefinite group of things that could be subject to review, let's identify them. Let's say what they are. And again, if there is a need to add things, they could be added. But that way you do have a predictable system, and you do have a system that I think would be consistent with what the legislature intended.

MR. FREDRIKSSON: You keep referring to outside an agency's authority. And I get real confused by that because as I read the ACMP, as kind of the primary permitting agency at least on

private lands, DEC uses this as an obligation imposed by the legislature to implement the standards of the ACMP and the approved district policies. And once the legislature directed us to do that I considered that to be within the agency authority. And I'm having a hard time reconciling what is or is outside the Department's authority. Because you're suggesting that the ACMP's standards are somehow outside our authority so that if we implemented those, or we might be obligated to amend our regulations? Maybe you can help clarify that.

MR. CALLAHAN: Yes. No, I'm not suggesting that the ACMP is outside DEC's authority or concern. But what I am suggesting is that a consistency determination is not a permit, and it ought not to have conditions attached to it which are outside agency permitting authority. The correct vehicle for such conditions ought to be agency permits. And I'm not assuming that DEC doesn't have authority on its own permits to put in conditions that might be necessary to make a project consistency with the ACMP. I mean, I think in my view agencies have a considerable amount of authority. But if they don't have enough authority then I think they should look to that and consider revising it. I think the wrong vehicle is to have sort of floating conditions on a consistency determination which is not a permit in itself. So, my concern is really a narrow one, it's that an agency simply procedural act within their own regulations, their own permitting authority. And I'm not really trying to address what a specific circumstance might be where a stipulation might truly be homeless. I think agency authority is fairly brought. But they ought not to be floating on sort of a non-existent coastal permit.

MR. FREDRIKSSON: So the issue then is not really homeless stips. The issue really is any stipulations that might be generated through a consistency review. I feel like you're arguing you want a consistent or a non-consistent and then some vehicle for negotiating through with the applicant resolution of an inconsistent, and not to have any determination come out with stipulations. Is that what I'm hearing?

MR. CALLAHAN: I think that there is room for alternative measures. And certainly turned in some proposals with respect to that. And I think Jeff Leppo commented yesterday about some of his concerns and engaged in a dialogue about how those could best be realized. I really don't have much to add to the specifics of that. But my concern is simply that if there are going to be alternative measures recognized that they ought to be voluntary and they ought to be unusual, they ought not to be something that's just an every day matter. And there ought to be a burden of explaining why it is that there can't be, say, a DEC condition on its permit, or Fish and Game condition or some other measure that will allow the project to go forward. Why is it that we need to go outside existing regulations? Because in my view as a lawyer, once you go outside what has already been subject to regulation, it's already been defined, you're really in a very broad, gray area. It's like a court perhaps issuing an injunction or something. It's just a very broad area. And what's the limit to that? Once you're outside existing regulations or existing agency permit practices, then where are you? I mean, what's the limit to it? And there isn't any. And then you're back in a situation where you're relying upon the good sense and good judgment of folks to carry things out. And 99 times out of 100 that's probably safe. But we ought not to have to be in that situation.

CHAIR GALVIN: You mentioned concern about including RCACs as review participants. They have been considered review participants in coastal management reviews pretty much since their formation back in the early '90s. Have you experienced or do you have any examples of abuse or

problems that have been created? Because their participation is extremely limited. They're only guaranteed information and the opportunity to ask for additional information.

MR. CALLAHAN: I don't think it's appropriate for me go back in time and try to encapsulate here what our experiences with review of our plans. Certainly there was lengthy review with many information requests, or have been in the past. I don't want to try to speak to whether that was appropriate or inappropriate. But in my mind the issue is this: I think as a matter of law, as a matter of principle they ought not to be a formal reviewer. I don't think that they should be given a different status than any other private group, of which there are many who would be interested in projects in a coastal zone. Many groups, depending on what project is at issue, might want to step up to the plate and have something to say about something. But what I think is inappropriate is to include any such group, however meritorious it may be as an organization, in any formal ACMP review, in any role. I think that ought to be reserved to the districts and to agencies. And with respect to RCAC, let me just add that I think they have a legitimate role to play, but it ought not to be as an ACMP reviewer. It ought to be independent of that.

Ms. Bird stated that it was her feeling that the RCACs are different than a lot of special interest groups that you're talking about in that the vast majority are representatives of communities, and essentially have a role within ACMP.

Mr. Callahan commented that any interested party can bring forward concerns and comments, and present them to ACMP reviewer in public hearing. RCACs role should not extend to formal review participant. Mr. Callahan did not want to suggest that their role as an interested party or member of the public ought to be limited or is inappropriate.

Mr. Fredriksson stated that review participant as it extends to the RCACs only applies to oil spill contingency plan reviews. It's very specific to the kind of activity that they would have access in terms of elevation.

Mr. Callahan stated that Congress did not in any federal statutes suggest that they are to be formally be part of a government review process of whether somebody is in compliance with state law; but they were intended to be a group independent of both industry and government. They have a statutory role and an expertise, but it's not in the ACMP.

No further questions were raised.

Chair Galvin then concluded the public testimony portion of the meeting. Chair Galvin stated that several organizations had submitted written comments in lieu of public testimony. Copies were distributed.

Chair Galvin then called for a brief recess.

BREAK 11:00 – 11:15

Mr. Pat Roland expressed concerns regarding the Council's ability to adopt regulations at the next meeting. **Mr. Roland** also suggested that the Council plan for a two-day meeting at the end of July. **Ms. Brower** agreed with Mr. Roland's comments.

The Council agreed to schedule a two-day meeting on July 23rd and 24th.

Mr. Colver commented on homeless stipulations, stating that they can take a life of their own. He suggested that the council need to work out a process so that a suggested alternative measure doesn't become a stipulation of a core permit unless all parties have agreed to it, or a summary of a state stipulation that's being talked about in a consistency determination become a stipulation of a core permit because then it may be a little different than the state agency meant when it was detailing within its specific permit.

Mr. Poland stated that in the revisions he would like to see something that takes the concept of clarity and predictability to the max of what the state, DGC and Department of Law feels that the regs can go. He also stated he had concerns about local entities stating how things should be, but then it being the states job to enforce and interpret how to apply local concerns.

Ms. Bird commented on the written comments and how there are other ideas on what was proposed than what was heard in the testimony.

Chair Galvin made comments based on his own work with the project. He stated the program was at a critical juncture in its evolution and potentially its survival. What the council is doing with the project in trying to put the concepts down in writing is to take the way the program has evolved and re-examine that and determine what things are appropriate. He stated that important factors included: number one, the program can't be just a process; instead what needs to be created is a responsible way and fair way of making a decision on whether a project is consistent. Also, the Council needs to recognize the political reality and the current political environment; permit reform is going to come about. Both candidates for governor agree that the permitting system needs to be examined and they intend to do that as part of their administration. Key members of legislature saying they want to take a comprehensive view of the permitting process. Coastal management will be a big part of that discussion. Chair Galvin stated he felt if the Council did not pass a package and the program goes into the next administration as it is now, it will be vulnerable to whoever feels their philosophical viewpoint should rule.

Chair Galvin stated that providing the specificity and predictability that was discussed in the testimony has been a goal from the beginning of the process. In order to reach that goal difficult choices will have to be made about what this program is, where it reaches and who's going to be affected by it. He stated that when the choices that need to be made are made that some individuals and organizations will feel that the program is losing something. The question for the council is it worth the ability to move the program in places where it's never been before, and to retain the opportunity on a project by project basis to move the program into another area - for that to be decided at a subsequent time - in exchange for the program having no real defined parameters.

Chair Galvin again emphasized the difficulties being faced by the Council when the package comes back for ultimate decision next month. He also pointed out that there would be no way to satisfy all the concerns raised.

Mr. Fredriksson reiterated the concerns raised on scope of review. He stated that what projects are subject to these reviews is fundamental to the question of predictability. The council must let people know what is subject to coastal consistency review and what projects are subject to this program.

Ms. Rutherford stated that in the package it states that associated activities require that there be an enforceable policy from the district. It allows a district to say this additional activity is important to us beyond what the state is currently regulating, but it has to be an enforceable policy.

Chair Galvin expressed his concern about how much time the council could spend discussing these points. **Chair Galvin** suggested that some of the newer council members might need additional time to digest all the testimony, the packet and the issues. He informed all members that he and Mr. Bates would both be available for questions that may come up.

Mr. Colver stated that the council had additional workload and needed to move ahead with the agenda. He suggested teleconferences between agencies and staff, perhaps allowing for public members to listen in and participate. Mr. Colver thought that it may be best to move ahead.

Mr. Dennerlein suggested there may be a compromise that was efficient in terms of time. He thought it would be helpful to go around and ask each member what points jumped out in the testimony.

There was further discussion about how to proceed, whether to continue on the current topic or to move forward with the agenda at this time.

MS. BREWER: My concern is enforceable policies, number one, the resources for the ones that don't have it and trying to comply with that and the changes that are going to apply to them. And the other part is one of the things that we faced in the last meeting that I attended, the permitting for the petition provision and how a local government like North Slope Borough has addressed that. They go through their own process, they go to the villages, they meet with the traditional knowledge, and then it goes to the planning commission, and then they go through another public hearing, then it passes. If it doesn't then there's an appeal process to the assembly. So each of our citizens are aware of that, and then the loophole that was allowed in disallowing the citizens to go ahead and petition and delay projects, because to us also we're pro-development in some areas but not pro-development in other areas. And to me it's the offshore development that I have concern about too. And what is in this regulation that protects us from what Unalakleet is saying because they have not been faced with what we've been going through all these so many years with offshore development and what impacts it has during the subsistence time. And number one is our whaling. Alaska's whaling commissions have been strong in working with the industry and they compromise. And there's a time period that industry just stops and respects our subsistence time. But what about the other districts that have fishing, beluga hunting, those kinds of thing, and I'm just concerned about that and how it's being addressed in these new provisions.

Ms. Ruby stated she felt more time was needed before she could speak to how the proposed package affects her district or region. She stated she would appreciate having a discussion before the meeting in July, possibly a teleconference, in order to prepare to better debate the amendments and other issues.

The council discussed how the process was regulated by the administrative procedures act. It would be logistically difficult to hold an additional meeting and/or teleconference in the time allowed.

MR. BATES: A lot of the responsibility fall on my shoulders, and Pat's shoulders, to take the testimony we've heard here today and turn it into words that aren't going to satisfy everyone, which we know we're not going to do. Obviously, I've seen testimony today and heard discussion of issues that I believe in some ways we can accommodate in this package. I've already considered ways that we can amend the language to be clearer or to address the ambiguities that people have raised. There are other issues we are not going to amend, although we've heard them. Either for federal reasons or for programmatic reasons, they're changes that can't be made, that we don't plan to make or that we don't intend to make. All of these issues I believe I can highlight for you either in a package, or in a memo that I'll send out with the package, so that you guys are aware not only of the changes we're making, but the changes we're not making. And to the extent I can provide rationale for both of those, I will. In two weeks time I'll have that done and you'll have it in time to read it, understand the rationale for the decisions we've made, the decisions we didn't make and come to the meeting prepared to make a decision. Recognize that any area we change in this package, it affects the rest of the package. We can't make line item changes to one section without having a domino affect throughout. So, be very cognizant that the changes we make, or if we make changes at that meeting, we will have to spend some time to make sure that it's flushed out throughout the package. What we'll put to you is the best we have with rationale for its language.

There was further discussion on how to arrive at the best solution and decisions possible. **Mr. Fagerstrom** suggested that it was difficult to do that by trying to come up with the solutions separately. **Chair Ga**lvin expressed his appreciation for all the comments and the public members. He asked that the council members not go back and develop positions, but to take the packets and educate themselves in order to come back in July and engage in discussion and make decisions. He also stated that the meeting in July is not intended to just come in and take a yes/no vote, but to work through the issues.

Chair Galvin called for a recess.

BREAK 12:15 – 1:20

Call to Order/Roll Call

Chair Galvin called the meeting to order at 1:20 p.m. on June 21, 2002. A quorum was present to conduct business.

G. Action on the Coastal Impact Assistance Program (CIAP) Competitive Grants

Ms. Lisa Weissler with the DGC presented background information on the CIAP. Ms. Weissler also detailed the conditions under which the grant monies were distributed and the process for allocating the funds. Ms. Weissler indicated that a detailed list of the top 56 projects awarded funds under CIAP was included in the materials handed out.

Ms. Weissler indicated that one application was held for policy decision. The application was submitted by Alaska Harvesters, Inc., a for profit entity. Alaska Harvesters is a nursery raising plants indigenous to Alaska's wetlands. Ms. Weissler reported a general feeling that this was a good project, but there was an issue regarding funding a for profit business, basically making a capital investment.

Discussion ensued regarding for profit nature of the nursery, as well as the different issues that were considered in the process.

Chair Galvin addressed the board and asked for any objections to the subcommittee's finding that the Alaska Harvesters project does not qualify for these funds.

Ms. Rutherford MOVED that the CPC establish a policy of not funding for profit entities within category 1, which is the conservation, restoration, enhancement, et cetera.

Chair Galvin stated that category 1 was explained on page 813 of the packet. He then read Category 1 - the conservation restoration, enhancement or protection of Alaska coastal marine waters, wetlands and watersheds. The motion would allow funding for Category 2 - education, particularly of young people, to develop an understanding and appreciation for Alaska's coastal environments and watersheds - available to for profit institutions.

Mr. Colver expressed his concern for pushing the motion through too quickly. He brought up the issue of village corporations, and how those corporations could be considered for profit entities.

Ms. Ruby expanded on Mr. Colver's concern for native corporations. She stated that in her region a lot of entities doing projects are private companies, private native corporations that have profit and non-profit aspects. She asked if it was necessary to get so specific at this time?

Mr. Brownfield stated that the council needed to think very carefully about setting rules right now to evaluate something that has already been put out for solicitation. If the council wants to get more specific in the long term, that should be taken up as a consideration after the completion of the current process.

The MOTION was WITHDRAWN.

Further discussion ensued regarding the remaining unranked projects and rejection letters.

Ms. Bird MOVED to approve the 55 projects for funding. Mr. Fredriksson SECONDED the motion.

There being no objection, the motion was APPROVED.

Mr. Brownfield MOVED to approve the funding of Grant Application No. 25, Science of the Sound project. Ms. Brower SECONDED the motion.

Ms. Bird expressed a conflict of interest on the vote and abstained.

There being no objection, the motion was APPROVED.

Mr. Colver MOVED to direct the subcommittee to reconvene and re-evaluate the remaining projects, and return to the Council a ranked list of an appropriate number of projects, to be determined by them, for consideration as the waiting list projects in ranked order. Mr. Fagerstrom SECONDED the motion.

There being no objection, the motion was APPROVED.

BREAK 2:15 – 2:25

H. Action on Geographic Information System (GIS) Protocols

Mr. Chas Dense gave an in-depth, informative presentation regarding the Geographic Information Systems Protocols for the Alaska Coastal Management Program, outlined as follows:

PROTOCOL 1

Grant Applications - what information must be included in the grant application.

A. What scale will geographic information be collected?

B. Will the public have free and unrestricted access to the data represented in the final product(s)?

C. What themes from the ACMP Standards and Guidelines at 6 AAC 80 and 6 AAC 85 will the GIS information address?

D. The grantee and any subcontractors shall agree to follow the latest version of these GIS Protocols for the ACMP.

PROTOCOL 2

The Grantee shall provide DGC with final GIS digital data.

PROTOCOL 3

GIS digital data shall be submitted in the following format:

A. Comply with the latest Open GIS Specifications.

B. Conform to the format, datum and projection requirements described.

PROTOCOL 4

GIS data shall be freely available to the public.

PROTOCOL 5

Conform with existing statewide ACMP themes.

PROTOCOL 6
Geo-reference computer aided design (CAD) data.

PROTOCOL 7
FGDC-compliant metadata shall accompany all GIS data.

PROTOCOL 8
Metadata must be posted on a clearinghouse.

PROTOCOL 9
Mapped GIS data must include the following information:

A. Required:
1. Title
2. Sources
3. Date
4. Legend
5. Disclaimer
6. Scale
7. Logos
8. Funding

B. Optional:
1. Projection
2. Producer
3. North arrow
4. Index map
5. Technical references

APPENDIX
Spatial Data Themes Addressed in the ACMP.

Mr. Dense requested the Council to approve of the protocols as presented.

MS. RUTHERFORD: There are two things I want to talk about. And that has to do with in your Protocol 4, and it is the whole issue of the data being in the public domain. And there are two elements to it. It has to do with the exceptions, where it says the reasons it might be appropriate to restrict public availability of data. Out of the four - agree with three of them absolutely - but the third one is costs, and that is recovering significant expenses of developing data. Again, I don't have any problem with three of the four. But the third one is costs. And there are two things going on right now. Number one, the telecommunications committee that's headed up by Annalee McConnell, director of OMB, and the Lt. Governor, has as a policy it's required that public monies be spent in purchasing data that is in the public domain. First of all, that is their standard that applies statewide. But the second piece is, DNR has been - us with some other agencies - have been dealing extensively recently with some private companies that are part of a coalition that are in fact arguing and will be very able to develop comparables that would always direct you towards making the exception based upon how much money they've been required to expend to establish the data. So, I think it's got to be a very rigorous exception exercise. And I think that you are going to be

forced repeatedly to making this exception based upon what the private companies has expended in developing data. We are seeing it constantly. It is a very serious issue.

MR. POLAND: I'm not following. Can you be more explicit? I think I hear what you're saying.

MS. RUTHERFORD: You are going to be getting arguments from certain entities as part of the funding that you should make an exception.

MR. POLAND: Entities being certain grant applicants?

MS. RUTHERFORD: Yes. Absolutely. Then they're going to forced by certain private companies to give you comparables that will clearly drive you towards making an exception to making the data available in the public domain. They don't have any problem with allowing making the products available in the public domain. I mean, obviously, we do sometimes, but it's not as tough an argument. But it's the underlying data. And we need the underlying data. But their comparables will constantly drive you to make the exception because they will be able to argue rather successfully that they've expended a lot of money to develop the underlying data, and that it should not be in the public domain. So, I think the exception exercise should be very, very rigorous. And plus, I think you've got the TIF to deal with, and they say that when you spend public money you will make that underlying data through the public domain.

MR. DENSE: I philosophically agree. It was just one of those things that was brought up during our reviews as being something that was a legitimate concern. And we debated this vigorously.

MR. CUSHING: I'll second everything that Marty said and take it a step further. When a grantee is soliciting for that product, if they're giving those companies an option, yeah, the cost will be $300,000 if it's open information, $100,000 if it's one-shot use. But if they're not given the choice, just the way companies work, it will be a lot lower in costs the first time around if they know the underlying data has to be public.

MR. COLVER: I concur 100 percent. This is very, very important stuff because I work in this field, mapping, surveying. And we have various file sharing database where we can exchange file information in using different software. And that is usually the hurdle between if some engineer wants to send me a file, will I be able to read it and download it. And that's been my concern all along in the subcommittee is that if we're going to spend this amount of money on mapping. Don't give us a proposal or write a grant contract that we're not buying the data, buying the copyright to reproduce that data and publish in the public domain so that the coastal management areas can use it, and the public. It's very important, I think, that it's public domain, and that we stand on that. And if you receive grant money that this is a condition of the grant absolutely. And then that we don't accept any proprietary software as a condition because then that is not useable. If we don't buy the data in a format that we can file share, transfer it, we're wasting money, taxpayer money. And it's just a wasted effort if we can't access that data. And so I can't emphasize enough that it's so important that we don't get locked into these proprietary, especially the sole source. You get into a Microsoft situation where we'll have to use only their proprietary information. And then they come out with the upgrade, and then you have to buy the upgrade. This $700,000 we're going to spend on mapping may be useless in a few years if we're not careful.

MS. RUTHERFORD: The other thing I might note is it's becoming a much more competitive field. Every day new satellites are going up and new companies are therefore making that information available. But if you don't force the grantee to go looking for an entity that will allow you to put it in the public domain, they may very well find themselves in a proprietary situation and the state won't have the full benefit of that information.

CHAIR GALVIN: So, I guess the recommendation is that with regard to these costs if it's going to remain an exception the hurdle needs to be established really high.

MR. COLVER: Or take it out.

MR. COLVER: The consensus I heard is it's out of there.

CHAIR GALVIN: Do you have a problem with removing it?

MS. RUTHERFORD: No. I'd like it out because I think Jack and Jim are right that if you allow it to come in that then you'll always find yourself with these comparables that you're bound to.

CHAIR GALVIN: Let's do this: is there a motion to approve the resolution? And then once we get the motion on the table then we can go through and make adjustments to the protocols themselves, and then pass them as amended.

Mr. Poland MOVED to approve the resolution. Mr. Fagerstrom SECONDED the motion.

CHAIR GALVIN: Marty's suggesting that the exceptions that are on page 5 of the protocols, Protocol 4, Section A, Subsection 3, be crossed off and eliminated. Is there any objections to eliminating costs from the exceptions?

No objections were raised.

MR. CUSHING: Can we make that also applicable to page 2, it talks about the same thing.

CHAIR GALVIN: Right, and making that consistent throughout the document.

Mr. Poland asked for clarification on the difference between subsection 3 and subsection 4.

MR. DENSE: The concept of costs that I had, certainly from ACMP, is public money. But if it was joined with the district, the district puts in money of their own also to join into it, and they put in $10,000 and they want to recover some of the $10,000 that they used to develop it, then they could charge something for that data. That was the concept behind it. The copyright is the proprietary information of the data provider, and that's very expensive to develop and to provide. I would say that sometimes a single purchase would be very expensive. From a single customer point of view, they would charge an awful lot, versus if they could sell it two or three times or whatever.

CHAIR GALVIN: So what we're looking at, my understanding is, we want to provide a recognition that sometimes you're going to have to accept that you're going to be given copyrighted information that would limit your ability to disseminate it for other people to use it. But what I think we want to make sure is included in here is that we see that as a rare exception and that we would prefer when the grant is being considered and submitted that this be something that is looked very closely in terms of the trade off. Do you think that that's captured in there?

MS. RUTHERFORD: I've never personally run into copyright as part of a data set.

MR. DENSE: It's proprietary, I think is the right word.

MS. RUTHERFORD: Yeah. I have run into licensing. And I'm nervous of licenses. I think of it as more of what was in the costs, and this whole comparable issue are virtually the same thing. Maybe there's copyright too in data sets that I'm just not familiar with. But if a copyright is the same thing as a license, then I have the very same concerns about the copyright section.

Chair Galvin stated that he believed copyright and license were the same thing and then read Subsection 4 in the record.

Mr. Dense stated that the difference in the price can be very significant between putting it in the public domain and just purchasing one time use.

CHAIR GALVIN: Let me ask this question, which is one that I think goes to the heart of what we're asking here. We are determining the protocols for ACMP funded projects. Can you give me an example of when we would ever spend money to buy this data under a license that would not allow us to use it?

Both **Ms. Rutherford** and **Mr. Dense** stated that there are lots of circumstances where that may occur. **Ms. Rutherford** stated she felt there are companies arguing that they have licenses for data, when that is really not what the licenses do. Companies can make an argument that they have ownership of the data though it's not covered in the license, and perhaps the same data could be available through other entities.

Mr. Colver stated he didn't feel the council should get into purchasing on a one-time basis.

CHAIR GALVIN: I'm looking to you guys who know this stuff better than I do. I've only come across it a couple of times as a user. What language are we inclined to include in these protocols to tell our grant recipients is our feeling about these licenses? What we're telling them is grantees shall provide GIS data as part of an ACMP project free to the ACMP participants and the general public, subject to the following exceptions. So we're creating an exception. And I'm afraid we're creating an exception that will establish the rule.

Mr. Brownfield inquired as to whether it was possible to do away with Section A completely.

Ms. Rutherford argued to keep Subsection 1 regarding sensitivity. She also stated that there may be privacy issues that are reasonable under Subsection 2.

Chair Galvin again asked for an example of a situation when it would be in the council's interest to fund a project that would be purchasing restricted data. He restated the question as "Why do we have this exception?"

Mr. Brownfield suggested that outside of the legal aspects of it, to eliminate the other exceptions.

CHAIR GALVIN: My suggestion is this: we eliminate this exception and we provide staff with direction that this is going to be the rule of the CPC. Now, at some point in the future when you experience a project that this either doesn't allow it to happen because the only available opportunity is through a licensed product, then I would suggest that that be brought back to the council for an individual evaluation of the cost benefit. But I think right now looking in the abstract, I can't imagine a situation where we would want to make that choice. If those are the only choices, I just don't see the benefit of having that exclusion.

Mr. Colver stated his support for Chair Galvin's suggestion.

CHAIR GALVIN: So, clarifying, there is the recommendation to strike the exception number 4 as well, and that the only two exceptions to the information being freely available to the public are sensitivity and privacy. Are there any objections to that?

Mr. Colver requested a definition of privacy.

Ms. Bird suggested to strike everything after "subject to" in line two, and change it to read "subject to legal limitations."

Ms. Rutherford cautioned that licenses could be construed as legal limitations, and suggested changing the terminology to "cultural resources."

Chair Galvin inquired of Mr. Dense if there was a specific issue of concern regarding Subsection 2, Privacy.

Mr. Dense indicated there was not.

Chair Galvin the recommended to leave subject to only Subsection 1, Sensitivity, and asked for any objections.

There being no objections, **Chair Galvin** asked for any other discussion.

MR. DENNERLEIN: Because of so much work with protocols and science committees, I suggest an amendment that in the resolve that the Coastal Policy Council approves the GIS protocols for the ACMP, insert dated June 12th, whatever, 2002, on file with DGC. And then after that you can administer an amendment that's consistent. But we should approve, since they're protocols, a date.

CHAIR GALVIN: June 21st, 2002, as amended. Pat, do you accept that as a friendly amendment?

MR. POLAND: I do.

Ms. Rutherford suggested the lead in sentence be amended to reflect that only sensitivity remained as an exception.

MR. DENNERLEIN: Last remaining substantive question on this last resolve. Well, this directs DGC to basically go and not only administer but amend them consistent with current technology practices. I trust DGC, but here we just had a discussion where members of the policy council understood things about current technology practices that added value to the decision about the protocols. So, I'm asking my colleagues an open question, do we want to have DGC to administer and suggest and bring forth to the council, as may be required, any amendments?

Chair Galvin inquired as to how often Mr. Dense foresaw having to update the protocols.

Mr. Dense was unsure of how often it would be required, but did not foresee anything in particular in the immediate future.

CHAIR GALVIN: I would strike the words "and amend." Would that satisfy you?

MR. DENNERLEIN: To administer the protocols consistent with current -- yeah.

CHAIR GALVIN: Do you accept that as a friendly amendment?

Mr. Poland asked for further clarification on the amendment.

CHAIR GALVIN: Because what we are saying is that this body is the body that establishes the protocols and it's not for DGC to continue to update then at their own discretion, that if they want to amend protocols themselves they're to bring them back to the CPC for approval of amended protocols. They can administer them and apply them as technology changes and as long as they are staying consistent with the protocols themselves. Are you okay with that?

MR. POLAND: I am. I guess it's my understanding that there is a working group of the major mapping organizations.

CHAIR GALVIN: We've adopted their standards, so I think as their standards continue to change it won't have to keep coming back to us because we've just adopted their standards.

MR. POLAND: Okay. Then I'm good.

CHAIR GALVIN: So, a friendly amendment accepted to strike the words "and amend" from the resolution?

MR. POLAND: Yes.

Chair Galvin then asked for any further discussion on the resolution before the council. No further discussion being raised, **Chair Galvin** then asked for objections on the motion.

No objections being raised, the resolution was APPROVED as AMENDED.

Mr. Colver MOVED to apply the protocols to the Coastal Impact Assistance Projects that include GIS. Mr. Cushing SECONDED the motion.

There being no objection, the motion was APPROVED.

I. Miscellaneous business

Ms. Sydney Mitchell presented a possible logo design for ACMP. Discussion ensued regarding the logo.

Chair Galvin confirmed that there would be a CPC briefing on the evening of July 22nd, and then meetings on both July 23rd and 24th.

It was MOVED to adjourn.

The meeting was adjourned at approximately 3:40 o'clock p.m.